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CURRENT TOPICS

Construction of Notices to Quit

As a general rule, a notice to quit is void unless it either names the correct date for the termination of the tenancy or uses a formula by which the correct date may be ascertained (see, e.g., *Hankey* v. *Clavering* [1942] 2 K.B. 326), and s. 25 (1) of the Landlord and Tenant Act, 1954, provides: "The landlord may terminate a tenancy to which this Part of this Act applies by a notice given to the tenant in the prescribed form specifying the date at which the tenancy is to come to an end . . ." In *Sunrose, Ltd.* v. *Gould*, which we report at p. 988, the landlord served the tenant notice dated 12th January, 1961, and immediately following the space reserved for the date of the termination of the tenancy was a reference to a note printed on the back of the form. In the date space, the day and month were clearly set out, but the year had been left with only the printed figures 196_. On the back of the form was printed, *inter alia*, the text of s. 25 (2) of the 1954 Act, which states: "Subject to the provisions of the next following subsection, a notice under this section shall not have effect unless it is given not more than twelve nor less than six months before the date of termination specified therein." The Court of Appeal decided that the notice to quit was valid because if the tenant had looked at the note on the back of the form he would have known that the only year that could be intended was 1961: it could not be 1962 because that date was too late to comply with s. 25 (2) of the 1954 Act. Notices to quit should be benevolently and liberally construed and, provided they give "the real substance of the information required" (per BARRY, J., in *Barclays Bank, Ltd.* v. *Ascott* [1961] 1 W.L.R. 717; p. 323, *ante*), they will be valid.

Remoteness: Personal Injuries

IT will be remembered that there is a conflict, at present unresolved, between the decision of the Court of Appeal in *Re Polemis & Furness, Withy & Co., Ltd.* [1921] 3 K.B. 560, and the views of the Judicial Committee of the Privy Council expressed in *Overseas Tankship (U.K.), Ltd.* v. *Morts Dock and Engineering Co., Ltd.* [1961] A.C. 388. In the earlier case the court found liability in respect of the direct consequences of a negligent act although those consequences could not reasonably have been anticipated, but the Judicial Committee rejected this test and held that remoteness of damage was simply a question of foreseeability. However, their lordships admitted that there were certain qualifications to this principle and it seems that one of these arises where a wrongful act causes personal injuries. In *Smith* v. *Leech Braine & Co., Ltd., and Another* (1961), *The Times*, 18th November, the plaintiff, a widow, claimed damages in

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respect of injuries sustained by her husband in the course of his employment at the defendants' premises. The husband was struck on the lip and burned by a piece of molten metal and LORD PARKER, C.J., formed the conclusion that common-law negligence had been made out against the defendants. Cancer ensued at the site of the burn and in spite of operations the man died of this disease. His lordship found that the burn had caused both the cancer and the death and the point arose as to whether the defendants were liable for the death. Lord Parker, C.J., answered this question in the affirmative because, in his lordship's view, the "test was not whether the defendants could foresee that the burn would cause cancer but whether they could have foreseen the type of danger." A similar point arose before the Scottish Court of Session in *Burden* v. *Watson* [1961] S.L.T. (Notes of Recent Decisions) 67. A collision occurred between a motor omnibus and a motor cycle and the driver of the omnibus sought damages from the motor cyclist in respect of, *inter alia*, shock and fright which eventually resulted in a coronary artery occlusion and thrombosis. LORD MILLIGAN rejected the defender's contention that such attack was too remote a consequence of the collision, because "it is sufficient in a case of this nature if the wrongdoer ought to have appreciated that, if he were negligent, someone to whom he owed a duty of care would suffer physical injury. It need not be shown that he ought to have foreseen the precise type of physical injury suffered." In other words, in personal injury cases, *Polemis* prevails.

Directing when Retired

To draw a national insurance retirement pension a man between 65 and 70, and a woman between 60 and 65, with a qualifying contributions record, must retire from regular work. Occasional work may be permitted provided that the work is not inconsistent with retirement. From time to time the question arises as to what work is not inconsistent with retirement; no firm answer is possible but such a retired person may work occasionally or to an "inconsiderable extent," which is usually considered not to be more than twelve hours a week. Recently this problem came before the Commissioner as reported in Decision No. R(P) 4/61. In that case a sole director of a limited liability company carrying on business as bakers and confectioners, who had previously taken a major part in the business, declared in July, 1958, that she intended to retire on 4th October, 1958, when she would work in the shop on Fridays and Saturdays only for hours totalling twelve per week. She carried out her intention and, except for the twelve hours, the work formerly done by her was done by her husband and an assistant previously engaged with a view to the claimant's future retirement. The claimant, who lived on the premises, produced medical evidence to show that she became unfit to continue work in March, 1959. In these circumstances neither the local insurance officer nor the local tribunal were satisfied that the claimant could be treated as having retired from regular employment. In the course of his decision upon appeal, the Commissioner explained that, in determining whether a claimant is engaged in a gainful occupation in circumstances not inconsistent with retirement, consideration must be given to the sort of work involved, and "if the work is of a kind which a retired person might reasonably be expected to do and there is no other feature in the occupation which would render it unreasonable to speak of a person engaged in it as having retired from regular employment, the claimant can be treated as having retired from such employment." In this case the Commissioner said that there had been a very marked change in the amount of work which the claimant had done since before 25th October, 1958, when she attained pensionable age. He continued: "She has no longer taken an active part in the business, save on two days a week . . . . and for the owner of a business to continue to participate in it only to that extent does not seem to me to be inconsistent with retirement from regular employment." Accordingly he allowed the claimant's appeal.

Disposal of Unwanted Vehicles

WHETHER it is because of the introduction of regular tests and on-the-spot checks on the roadworthiness of motor vehicles or simply a consequence of the affluent society in which we are said to live, there can be no doubt that the abandonment of unwanted and unsaleable vehicles presents a very real problem. There are several ways in which this problem can be approached. Under s. 1 of the Litter Act, 1958, it is an offence to deposit and leave litter in a public place, and many motorists who have abandoned worn-out cars in public places have been convicted of this offence. At first there was some divergence of opinion amongst magistrates as to whether a car could be said to be "litter" within the meaning of the Act, but in *Vaughan* v. *Biggs* [1960] 1 W.L.R. 622, the Divisional Court did not seem to raise any objection to this interpretation. Another remedy, which has recently been adopted by Shrewsbury Corporation, is for the council to exercise its powers to remove abandoned vehicles from grass verges and similar places and recover the cost of such removals from their owners. There is much to be said for this procedure—assuming, of course, that the owner of the vehicle can be traced—but we are impressed by Bedford Corporation's answer of opening a "cemetery" for cars which have outlived their usefulness. The councillors of Bedford were also concerned at the large number of vehicles which were abandoned in municipal car parks and in odd corners of housing estates and they decided to accept cars for "burial" provided that they are told beforehand that they are coming and the vehicle's registration book is produced. This last requirement is, of course, the means by which the corporation satisfies itself that the vehicle has not been stolen, and a further condition is that the vehicle belongs to a Bedford ratepayer. Bedford's "cemetery" is an abandoned gravel pit which is normally used for the disposal of household refuse and, in our view, this is a good solution to a problem which is likely to become even more pressing. The disposal of old cars is not always an easy matter, but the ratepayers of Bedford can dispose of them without fear of prosecution or being faced with the cost of removal. It is to be hoped that other councils will find it possible to open such a "cemetery" and, by so doing, they will provide a useful service by ensuring that their districts are free of unsightly wrecks.

Guilt without Cruelty

"BETTER a bad excuse than none at all." So said William Camden and so, it seems, thought a motorist who, when charged with exceeding the speed limit, pleaded that he had committed this offence in order to break a spider's web which was interfering with the movement of his speedometer needle. Auckland magistrates fined the accused £3 and made a point of assuring him that he had been convicted of a motoring offence, not cruelty to spiders!

"THE MINICAB WAR"

THE emergence on the streets of London of several hundred "minicabs" offering themselves for hire without being licensed as hackney carriages has raised and will continue to raise legal and administrative problems of the highest importance. These vehicles and their drivers are governed by no restrictions beyond those affecting private motorists except that there are some regulations controlling the use of vehicles with advertisements in central London and the royal parks.

The London taxi-driver on the other hand must pass the strict "knowledge of London" test, which takes him between a year and eighteen months of study and practice acquired by riding through London on a bicycle. He must pass a special test of driving skill. He must be fit and remain fit, and being a "licensed man" he must be of good character. His charges to the public are controlled unless the hiring covers a distance over six miles. His vehicle must comply with special standards of construction, it is subject to strict annual inspection and spot tests of its mechanical condition, and it must at all times be clean and unblemished. Last but not least, the London taxi-driver is subject to a whole series of strict regulations comprised in eight Acts of Parliament, all except one passed in the last century before the dawn of the motor age. There are similar Acts and regulations somewhat less strict governing the use of hackney carriages outside the Metropolitan Police District, the most important of these Acts being the Town Police Clauses Act, 1847.

Comment in Parliament

It is not surprising that the London cab trade bitterly resents the advent of the minicabs. Before Welbeck Motors put the first large batch of minicabs on the streets on 19th June, 1961, the matter was raised in Parliament on 7th June by Mr. R. J. Mellish, M.P. for Bermondsey, speaking on behalf of both owners and drivers of London taxis. He described the anger of those for whom he spoke, and mentioned the fear that there would be "very serious scenes." Mr. Vosper, then Minister of State at the Home Office, replying on behalf of the Government, said:—

> "The Government does not propose to allow the privilege of plying for hire, which is confined by legislation to licensed taxicabs, to be enjoyed by vehicles which are not subject to proper controls"

(*Hansard*, vol. 641, no. 122, col. 1353).

The Minister went on to refer to a statement of the Home Secretary made in the House on 15th March, 1961, that:—

> "According to advice he has received, a procedure under which a vehicle could be hailed in the street, and thereupon engaged for an immediate journey by means of a booking placed over a radio-telephone installed on the vehicle, amounts to plying for hire; and if that vehicle is not licensed as a taxicab an offence would be committed."

The Minister of State went on to say that the police would prosecute unlicensed vehicles plying for hire in the manner described, and commented that, while "plying for hire" was nowhere judicially defined by legislation, there was ample judicial authority to show what kind of activity was within the meaning of this expression. The Minister did not believe that at that time the minicabs had, with one possible exception, attempted to ply for hire in this way.

The Minister did not consider that the advent of minicabs would significantly increase congestion in central London or the difficulties of public transport there, and he recognised that taxis bore a burden in the standards of construction of their vehicles and the knowledge of their drivers which entitled them to the protection provided by the ban on unlicensed vehicled plying for hire. He promised that the Government would not stand aside in the event of breach or evasion of the law by minicabs. The Minister refused to commit himself at that stage with regard to the necessity for fresh legislation.

If the popular Press is to be believed, Mr. Mellish's fears about the possibility of serious scenes were not entirely misplaced, and there is undoubted bitterness between taxi-drivers and minicab drivers, and also some ill-feeling between taxi-drivers and the police. It is now the practice in London magistrates' courts, whenever a taxi-driver and a minicab driver appear together, to inquire whether the charge relates to the "minicab war." There is the possibility of minor traffic accidents being regarded as deliberate hostile acts in this so-called "war."

Relations with the police

As far as relations with the police are concerned, there is a feeling on the part of taxi-drivers that unlawful activities by minicabs are tolerated while the law is strictly enforced against them. Taxi-drivers have made themselves liable to prosecution for obstruction and other offences while in the act of investigating minicab activities and trying to draw police attention to them. The police officer on the other hand often finds himself genuinely bewildered when asked to take action in cases of alleged unlawful plying for hire by minicabs.

Attention may be drawn to a minicab picking up passengers in the street, a minicab waiting in the street without a booked job to get a call on the radio, or people standing in the streets hailing a minicab and then making a booking by radio or public telephone, and engaging that minicab or another. A minicab may be called to hirers by another minicab using its radio. The ordinary policeman often does not know whether such activities are illegal or not.

In fact it is not easy for anyone to decide on the legality of such acts. There was an unsuccessful prosecution of a minicab parked for about half an hour by the roadside in the northern part of Edgware Road. There have been unsuccessful prosecutions of minicabs where the passengers, after being picked up on the street, then made a booking by telephone. There have also been successful prosecutions on similar facts. In one case the learned magistrate, after hearing legal argument, considered that a minicab would not be plying for hire if it was being used as "a mobile booking office" to obtain hirers for other minicabs, even though the vehicle in question had a large sign on the sun visor with the words "MINICAB BOOKING." Each case, of course, depends upon its facts, so that not every case that looks like a test case is one. It is understood that at least two cases covering circumstances similar to those mentioned above may be taken on appeal by way of case stated to the Divisional Court of the Queen's Bench Division, which may review the law in the light of present conditions.

Cogley v. *Sherwood*

The law regarding "plying for hire" within the Metropolitan Police District was fully reviewed in 1959 in the well known London Airport case, *Cogley* v. *Sherwood* [1959] 2 W.L.R. 781.

In that case two taxi-drivers made a test booking of certain vehicles provided by a car-hire firm operating in the airport by each applying at one of two offices, from which they were escorted to the standing place where the vehicles and the drivers were waiting. The owners and drivers of these cars were convicted by the lay magistrates at Uxbridge. Against this decision there was an appeal by way of case stated to the Divisional Court, which was allowed on the ground that the cars in question were not exhibited, and so were not unlawfully plying for hire within the meaning of s. 7 of the Metropolitan Public Carriage Act, 1869.

In *Cogley's* case, according to the headnote of the report, "the cars appeared to be private cars, the drivers' uniforms were similar to those worn by private chauffeurs, and so the cars at the standing did not give the appearance of being cars available for hire."

This method of operating is of course in complete contrast to the modern minicabs, which look utterly unlike private cars, have drivers wearing civilian clothes or a conspicuous military-type uniform, and operate all over the Metropolitan area on the streets and not in garages or on regular standings.

In his judgment in this case Lord Parker, C.J., after pointing out that the 1869 Act applied to the Metropolitan Police District and the City of London and that London Airport was within this area, went on to distinguish between stage carriages and hackney carriages, the former being carriages plying for hire and charging according to the places or seats, while "a hackney carriage shall mean any carriage for the conveyance of passengers which plies for hire within the limits of this Act, and is not a stage carriage" (s. 4).

He said that in all the cases from 1869 onwards he had been unable to find a comprehensive and authoritative definition of "plying for hire."

Lord Parker went on to point out that the 1869 Act dealt with carriages plying for hire and not with persons carrying on the business of letting out carriages. "It is the carriage that must ply for hire," he said, "though a human agency must clearly be involved." He did not think that vehicles belonging to any of the many car-hire firms were plying for hire. He was dealing, of course, with vehicles looking like private cars, chauffeur-driven or self-driven, operating from a garage or stand not accessible to the public except through a booking office. This, as has been mentioned, is not how the minicabs operate today.

Consideration of "hackney carriage"

The distinction between the hackney carriage, then horse-drawn, plying for hire, and the job-master, the predecessor of the modern car-hire firm, was clearly drawn only two years after the passing of the 1869 Act by Montague Smith, J., in *Allen* v. *Tunbridge* (1871), L.R. 6 C.P. 481. This judgment was applied in a modern context in *Armstrong* v. *Ogle* [1926] 2 K.B. 438, by Lord Hewart, C.J., who said: "The contrast is between a particular and definite private hiring and a public picking up of passengers."

Lord Parker in *Cogley's* case referred to another earlier case, *Clarke* v. *Stanford* (1871), L.R. 6 Q.B. 357, where a carriage waiting at a railway station was held to be plying for hire, and Mellor, J., said: "What is the carriage there for? Though the driver makes no sign, he is there to be hired by persons who arrive by train . . . it [the carriage] is therefore plying for hire."

Lord Parker went on to comment that "in all the cases where it has been held that a carriage was plying for hire, it was in fact there and on view." He referred to *Gilbert* v. *McKay* [1946] 1 All E.R. 458, where cars were held to be plying for hire even though a member of the public could not choose his vehicle, because they were clearly on view standing, like taxis on a rank, outside offices bearing the sign "Cars for Hire." The learned Lord Chief Justice referred also to the case of *Cavill* v. *Amos* (1900), 16 T.L.R. 156, where Channell, J., said: "A man might possibly ply for hire with a carriage without exhibiting it, by going about touting for customers."

Lord Parker, however, felt that it was of the essence of plying for hire that the carriage should be exhibited, and, applying this principle to the case before him, considered that as "the cars in question were not exhibited . . . they appeared to be ordinary private cars with private chauffeurs." Thus they were not plying for hire.

Review required

There has been no review of the position by the Divisional Court since the minicabs began to operate on the streets by new methods. To make the legal position certain, it might well be necessary to take two or even three test cases covering the different types of minicab operations.

In any event it may well be necessary for the Government to review the position regarding minicabs in the light of police reports that will be available to them, and to consider fresh legislation.

This task was considered urgent as long ago as 1947, when Lord Goddard, C.J., in the case of *Goodman* v. *Serle* [1947] 2 K.B. 808, at p. 815, commented with regard to the laws about hackney carriages: "We do not pretend to find the construction of these Acts at all easy."

In the case of *Hunt* v. *Morgan* [1949] 1 K.B. 233, at p. 240, he said: "It is, therefore, not surprising that cab-drivers, the police and magistrates, to say nothing of the general public, have difficulty in ascertaining the law on this subject and make mistakes about it. It would seem that an Act consolidating and amending and, if possible, simplifying the law with regard to cabs is very desirable."

In 1949 the Home Secretary set up a working party to examine the law with regard to hackney carriages but it never reported. The present Home Secretary might well call for the files relating to this working party and take some effective action with regard to laws described in Halsbury's Statutes as being "as anachronistic as the horse cabs which called them into being."

C. W.-P.

Societies

The INCORPORATED LAW SOCIETY OF PLYMOUTH held their annual dinner on 11th November. Mr. A. J. Driver, president of The Law Society, spoke about the problem of overcoming the shortage of admitted and unadmitted staff in solicitors' offices. Alderman Arthur Goldberg, president of the Plymouth Law Society and Lord Mayor of Plymouth, said that over the years the society had provided thirteen civic heads and that there were now six practising solicitors in the city council.

The SOLICITORS' MANAGING CLERKS' ASSOCIATION held their annual festival dinner on 9th November at the Connaught Rooms. The president, Mr. W. E. Griffiths, was in the chair, and Lord Morris of Borth-y-Gest proposed the toast to the association. Among those present were: Lord Justice Upjohn, Mr. Justice Russell, Master W. F. S. Hawkins, Master Raymond Jennings, Q.C., Master J. Ritchie, Mr. Peter Foster, Q.C., Mr. C. H. S. Blatch, and Mr. K. O. G. Huntley.

THE LAND DRAINAGE ACT, 1961

THE Land Drainage Act, 1961, is the latest of a series of measures dealing with land drainage, the protection of low-lying lands from the sea, the repair of embankments and the removal of obstructions, which has its origins in the Commissions issued from very early times under the prerogative of the Crown and under various Acts of Parliament and also in an Act of 1531–2 relating to Commissioners of Sewers, the predecessors of the present river boards and drainage boards. Following the report of a Royal Commission in 1927, the general Acts relating to Commissioners of Sewers, including Acts amending the Act of 1531–2 and in particular the Land Drainage Act, 1861, were repealed by the Land Drainage Act, 1930, which has regulated the subject for the past thirty years. It established catchment boards and made provision for the transfer to those boards of the rights, powers, duties, obligations and liabilities previously discharged by any drainage authority in connection with " main rivers " and for the abolition of all Commissioners of Sewers. By virtue of orders made under the River Boards Act, 1948, the functions of catchment boards have been transferred to and are now exercised by river boards covering the whole of England and Wales, except the Thames and Lee Catchment areas and the administrative county of London. The Act of 1948 also transferred functions relating to the prevention of river pollution and fisheries to the new river boards and made provision, in appropriate cases, for the transfer to such boards of functions of navigation, conservancy and harbour authorities. In carrying out their duties river boards must conserve the water resources of their areas and exercise statutory duties in connection with the measurement and recording of rainfall and river flow.

The 1948 Act also rendered obsolete general drainage powers relating to land not under the jurisdiction of a catchment board conferred on county and county borough councils by s. 50 (1) of the 1930 Act, but it did not affect the powers conferred on those councils by subs. (2) of that section to serve notices relating to the maintenance of watercourses or to prepare schemes for the drainage of small areas under s. 52 of the earlier Act.

Under Pt. XI of the Public Health Act, 1936, local authorities may deal with streams, watercourses, ditches and culverts which are prejudicial to health or nuisances but they may only exercise these powers in relation to streams, etc., within the jurisdiction of a land drainage authority after consultation with that authority.

The Bill for the Act of 1961 implemented a White Paper published by the Government in 1959, following protracted negotiations with interested organisations on the recommendations of the Land Drainage Sub-Committee of the Central Advisory Water Committee which sat under the chairmanship of Sir Arthur Heneage. At the time when this sub-committee published its report and recommendations the general scheme of land drainage legislation and control in England and Wales was as follows.

Drainage authorities. River boards (appointed bodies with precepting powers) were responsible for the main rivers or groups of rivers, and internal drainage boards (elected bodies levying rates directly on owners and occupiers) were responsible for internal drains in defined parts of river board areas which derived benefit or avoided danger as a result of specific drainage operations. County and county borough councils could deal with the maintenance of watercourses or the drainage of small areas incapable of being dealt with by the constitution of an internal drainage district, and public health authorities possessed permissive powers in relation to streams and watercourses, ponds and ditches which were prejudicial to health or statutory nuisances.

Intermediate watercourses and farm ditches were, generally speaking, left to the riparian owners and farmers.

The Heneage Committee drew particular attention to the discrepancy in the rateable values of various river board areas which they considered were quite unrelated to their drainage problems, and they recommended that river boards should be responsible for all watercourses other than drains in internal drainage districts and ditches, and that a drainage charge should be levied on all agricultural land not within an internal drainage district.

The 1961 Act (which came into force on 27th July, 1961) seeks to extend the powers of land drainage authorities (including local authorities), to increase the financial resources of river boards and to confer specific powers for dealing with intermediate watercourses and farm ditches.

Drainage charges

Part I of the 1961 Act authorises the raising and levying of (1) general drainage charges to increase the revenue available to river boards to meet the expenses of general drainage works, and (2) special drainage charges to pay for specific schemes of drainage works required " in the interests of agriculture."

At the present time river boards obtain their revenue from Government grants, contributions from internal drainage boards and precepts on county and county borough councils who, in turn, collect the money—directly or indirectly—from the ratepayers. Since agricultural land was de-rated in 1929 it has not contributed towards land drainage expenditure unless situate in an internal drainage district and rates have been collected for purely local works by the internal drainage board.

The new power to levy general drainage charges is an enabling and permissive one. Under it a river board may levy a uniform charge on the occupiers of agricultural land and buildings in those parts of its area outside any internal drainage district so as to produce approximately the same revenue as the precepts issued to the local councils.

The power to levy a special drainage charge will depend upon the preparation by the river board of a scheme for carrying out drainage works in a defined area " in the interests of agriculture." Here again the power is permissive and discretionary; if they propose to exercise it the board must consult interested organisations before preparing a scheme, and after it has been made send copies to those organisations and to the local authorities and drainage boards in the area. Provision is made for objections and for Ministerial consideration of the scheme and any objections and, if it is confirmed, (i) the watercourses designated in it will become part of the river board's " main river " (although distinguished from any other part of such river), and (ii) the board may execute the works and collect the special charges authorised by the scheme from the occupiers of agricultural land in the area covered by the scheme. There is a statutory maximum charge of 1s. in the £ of the Sched. A value of any land or buildings less the amount of any general drainage charge raised by the river board for the same year.

Drainage rates

The new Act alters the basis of assessment of certain properties for the purpose of drainage rates made for a period beginning after the end of March, 1963, by substituting net annual value for Sched. A values for non-agricultural properties and by allowing the occupier of any agricultural land (particularly where the original holding has been sub-divided) to apply for a Sched. A value which would be in line with the general tone of the list in the internal drainage district. It also makes provision for drainage rates to be collected (if the authorities agree) by rating authorities, for differential rating and for rights of appeal against decisions of drainage boards on claims for exemption from drainage rates.

Local authorities' powers

The powers of county and county borough councils to prepare and execute schemes of drainage works in small areas are brought up to date and the limit of expenditure under such a scheme is raised to £20 per acre (compared with £5 an acre and an overall total of £5,000 in the 1930 Act).

Borough, urban and rural district councils can now remedy or mitigate damage caused by flooding by exercising the powers of maintenance, improvement or construction of drainage works to watercourses other than "main river" provided they obtain the consent of the river board for all works other than those carried out in an emergency.

All types of local authorities except parish councils may now take action under s. 35 of the 1930 Act to secure the removal of obstructions in watercourses.

Ditches

Part III of the 1961 Act replaces provisions of the earlier Act relating to ditches. The owner or occupier of any land which is injured, or the improvement of the drainage of which is prevented, by the condition of any ditch may apply to the Agricultural Land Tribunal for an order requiring the persons responsible to cleanse the ditch and put it in order and protect it. If necessary, the tribunal may authorise the applicant to carry out the work, and, if any work specified in a tribunal's order is not carried out, the Minister of Agriculture, Fisheries and Food may authorise the execution of the work and the recovery of expenses from the persons responsible.

Other provisions

Any person who is under an obligation in relation to an awarded watercourse may now request a river board to submit a scheme dealing with that watercourse and appeal to the Minister (if he so desires) against their decision or failure to take action on the application.

For the purposes of sea defence works a river board area is now deemed to extend beyond the low-water mark, and the board's power to maintain, improve or construct drainage works for the purpose of defence against sea water or tidal water can be exercised anywhere in the river board area irrespective of whether they are works in connection with the "main river."

Sections 28 to 31 replace provisions in the 1930 Act dealing with notices requiring the removal of obstructions in watercourses, the appropriation and disposal of spoil and the control of structures in, or affecting, "main rivers."

The provisions of the new Act dealing with powers of entry (ss. 40 and 49 and para. 32 of Sched. I) were discussed at considerable length in the House of Commons. Provision is now made for written notice to the occupier (except in case of emergency), which must be given at least seven days beforehand if entry is to be made on land used for residential purposes or if entry is to be made on any land with heavy equipment. There is also a liability (in some cases a discretionary power) to pay compensation for injury unless the injured person was himself liable to do the work under an order made under Pt. III of the Act.

A. E. K.

Oversea Influence of English Law

THE LAW OF TORTS IN THE U.S.A.

By G. B. J. Hughes, M.A., LL.B., Senior Lecturer in Law in the University College of Wales, Aberystwyth; formerly Visiting Assistant Professor and Senior Fellow, Yale Law School

The background in which tort litigation is set in the United States is markedly unlike that of England. A case will almost certainly be tried before a jury; the plaintiff's attorney will probably be acting on a "contingent fee" basis, by which he takes a substantial percentage of damages if the suit is successful and gets nothing if it fails; the defendant, even though he wins, will still have to pay his own attorney's fees in full. Damages may run into hundreds of thousands of dollars, so that the annual tort litigation turnover in the United States is a major financial enterprise which has led plaintiffs' and defendants' attorneys to organise themselves into associations, both publishing their own legal journals.

In view of this it is perhaps surprising to find that the substantive law of torts in American jurisdictions is rarely radically different from that of England. Tort law in the United States is still very largely common law. Legislative intervention has been less frequent and even more timid than in England. As one might expect in a welter of fifty jurisdictions, the record of judicial activity is uneven. Some areas of the law have in all or some jurisdictions been pushed further than in England while others lag behind the English development.

Negligence

As in all common-law jurisdictions the great feature of modern development in the United States has been the elevation of the tort of negligence and negligence theory to a dominating position. In the field of damages for negligently inflicted nervous shock American courts have been slow and cautious and have, with very few exceptions, not gone as far as *Hambrook* v. *Stokes* [1925] 1 K.B. 141, holding instead to the principle that recovery can only be given where the plaintiff was himself in physical danger. In the field of negligent misrepresentation, on the other hand, most American jurisdictions will grant a remedy where an English court might not. This is done either on frank negligence principles or by an extension of the tort of deceit. The general liability in negligence of manufacturers to those consumers injured by the faulty state of their products was advanced by Judge

Cardozo as early as 1916 in the celebrated case of *McPherson* v. *Buick Motor Co.* 217 N.Y. 382, and has gained general acceptance. As in England, this principle has been extended to cover the case of the liability of a vehicle manufacturer or repairer to a pedestrian ultimately injured because of the defective state of the vehicle. Unlike England, the manufacturer in the United States is not always relieved of liability by the reasonable possibility of intermediate examination.

An instance of legislative inertia is the field of contributory negligence, where, for the most part, American jurisdictions cling to the common law with its refinements of last opportunity (or "last clear chance," as they call it). Apportionment legislation only exists in some federal matters and in a few states where it is qualified by the requirement that the plaintiff's negligence should be "slight" or "not as great" as that of the defendant. This disinclination to enact apportionment statutes is no doubt partly explicable by the power of insurance lobbies. The continuance of the common law of contributory negligence is supported in most American jurisdictions by the retention to some slight extent of the common employment or fellow-servant doctrine in restricting the possibility of an action against an employer by an employee injured at work. This remains a social problem of some size since, although all jurisdictions in the United States now have workmen's compensation statutes which exclude all possibility of a common-law action when the statute is applicable, these statutes do not apply to some important groups of employees. The British solution of this problem has undoubtedly been more thorough.

Strict liability

Modern notions of strict liability, introduced into English law by *Rylands* v. *Fletcher* (1868), L.R. 3 H.L. 330, were at first received in lukewarm fashion by American courts. A few states followed *Rylands* v. *Fletcher* but more rejected it, under the influence of a rampant theory of no liability without fault which was well suited to the needs of the entrepreneur section of a swiftly developing industrial society. The passage of time has brought an awareness of subtler varieties of social fault and, now, most states either apply the *Rylands* v. *Fletcher* principle or, more frequently, reach roughly the same results by doctrines of strict liability for extra-hazardous or ultra-hazardous activities. Indeed, it may be suggested here that the American "extra-hazardous activity" approach is preferable to the English *Rylands* v. *Fletcher* principle, which is unhappily rigid in its detailed requirements of "accumulation" and "escape."

Injuries to plaintiffs upon the defendant's premises are still tightly governed in most American states by the invitee-licensee-trespasser frameworks. Nowhere is there legislation comparable with the Occupiers' Liability Act, 1957. So many subtle distinctions have been taken in this branch of the law by American courts that the common law has been refined to the point of obscurity. Some states (notably New Jersey) have contrived by judicial activity to escape to a large extent from the old trinity of categories, but in most jurisdictions legislation is badly needed in this area.

Libel and slander

The torts of libel and slander in the United States are strikingly similar to the English picture before the passage of the Defamation Act, 1952. Great inconsistency remains between the states as to whether defamation by radio and television should be treated as slander or libel. Strict liability remains and so does the distinction, once familiar in England, between slanders on a man in the way of his occupation and those which may only incidentally affect his reputation in his occupation (it was not actionable *per se* in one American case to say of an attorney that he was a "bum in a gin mill").

An American development, however, that must be of great interest to British lawyers is the comparatively flourishing state of the torts of the intentional infliction of mental or emotional disturbance and of invasion of privacy. There is a long line of American cases holding common carriers liable to passengers and even prospective passengers for insulting behaviour and this has been extended to defendants who occupy a variety of premises to which the general public are admitted. Savage methods of debt collecting have been held actionable under this head as well as the misguided practical joke of the *Wilkinson* v. *Downton* [1897] 2 Q.B. 57, type. The line must, of course, be carefully drawn here to discourage frivolous actions based upon trivial incidents. This the American courts have done successfully by requiring that the conduct complained of must be of an extreme or flagrant nature before redress will be given. It is not, for example, actionable to wound a woman's sensibilities by inviting her to illicit intercourse. The amended American Restatement of the Law of Torts now recognises as a separate tort the intentional causing of severe emotional distress.

Invasion of privacy

The growth of the tort of invasion of privacy is a singular example of the influence of academic literature. It is generally admitted to stem from an article in the *Harvard Law Review* of 1890 by Warren and Brandeis, and by now the tort is clearly recognised in about half of the American jurisdictions. Prosser, a leading American text writer on torts, suggests that the tort may be seen to have four aspects: (1) an intrusion on the plaintiff's physical solitude or seclusion, (2) publicity which violates the ordinary decencies, (3) putting the plaintiff in a false position in the public eye, and (4) the appropriation of some element of the plaintiff's personality to a commercial use. So in 1956 the Ohio Supreme Court gave $2,000 damages to debtors whose creditor had harassed them with phone calls and informed their employers and landlord of the debt. But in 1958 the Federal Court of Appeals for the Third Circuit, by a four to three decision, denied recovery to the widow and children of a man who had been beaten to death by a teenage gang, in an action against a magazine which had published an account of the matter including a photograph of the widow. The balance of public and private interest is a delicate one here but the American courts have been infinitely bolder than their English counterparts in combating modern techniques for giving unsought publicity with the threat of damages.

Family relations

An area of the English law of torts which has been much under attack recently is that body of rules governing the impact of the marital status upon tort actions (see Law Reform Committee, Ninth Report: Cmnd. 1268). American law in this field is for the most part just as archaic as the English picture. Most jurisdictions continue to refuse an action between the spouses for personal injuries. Some states have extended this to the refusal of an action in tort between parents and minor children. However, the wife's power to sue the husband for a tort affecting her property is generally available also to the husband for a similar action against his wife. Unlike England, the wife in America is generally not permitted to sue after marriage for a pre-nuptial tort. But

about one-third of the states have by judicial action quite overturned the old arguments and permit actions between husband and wife even for personal injuries.

Possible actions for interference with family relations are more numerous in the United States than in England. The tort action for "criminal conversation" or adultery is available to the husband in nearly all jurisdictions as well as the broader action of enticement and a form of action generally known as "alienation of affections." For this last action it is only necessary to prove conduct by the defendant which has led to a diminution of the conjugal attitude of affection in the wife evidenced by some actual behaviour on her part. All these forms of action are generally available also to the wife. An action is available to a parent for the seduction of a daughter. The ancient requirement of a "loss of services" here has been reduced to a minimum and in some states has been dispensed with altogether. In many states a broader action exists, quite divorced from the notion of "services," by which a parent may sue for the deprivation of a child's society, and in a few states a right of action has been recognised in a child for alienation of the parent's affections. American courts are thus ready to recognise a wide range of relational interests as being worthy of protection.

Where members of the family receive personal injuries the rights of other members are broadly the same in the United States as in England, but in a few states the husband's right of action for loss of his wife's consortium has been held to have been abolished by the statutes emancipating married women. In most states no right of action in the wife for loss of consortium has been recognised, so that *Best* v. *Samuel Fox & Co.* [1951] 2 K.B. 639, has been paralleled in the United States, but in recent years a few courts have rejected this view and have allowed a similar action to the wife.

No general appraisal of the law of torts in the United States could be adequate without paying tribute to the excellence and influence of American academic legal writing. American law teachers and law schools have produced in the field of torts a number of excellent text-books (among which it is proper to mention Prosser on Torts and Harper and James on Torts as contributions that will be of enduring importance), a host of splendid case books, and a vast amount of periodical literature. This American writing on torts is characterised by a perpetual concern for policy aspects of the law and penetrating analyses of the social and economic consequences of the law. This body of continuing, perceptive literature has had a great influence on the American Judiciary. Too often it seems not to have reached or impressed legislative bodies and, without doubt, the most regrettable feature of the American system of private law is the legislative inertia that mars so stimulating a legal climate.

ESTOPPEL PER REM JUDICATAM

THE principles of law governing estoppel *per rem judicatam inter partes* are generally stated in the form derived from the words of De Grey, C.J., in the *Duchess of Kingston's* case (1776), 1 Leach C.C. 146; 20 St. Tri. 355; 1 East P.C. 468, and quoted by Lord Selbourne, L.C., in *R.* v. *Hutchings* (1881), 6 Q.B.D. 300, at p. 304, viz.:—

> "The judgment of a court of concurrent (or of exclusive) jurisdiction, directly upon the point, is conclusive upon the same matter between the same parties coming incidentally in question in another court for a different purpose. But neither the judgment of a concurrent or exclusive jurisdiction is evidence of any matter which came collaterally in question, though within their jurisdiction; nor of any matter incidentally cognisable, nor of any matter to be inferred by argument from the judgment" (*sic*).

Other authorities have added the requirement that there must be a *lis inter partes* for the judgment to proceed on, and that the court must be a court "of competent jurisdiction that has seisin of the case for the purpose of reaching a final decision *inter partes*" (see *Inland Revenue Commissioners* v. *Sneath* [1932] 2 K.B. 362, at p. 380).

Rating and taxation cases

In *Society of Medical Officers of Health* v. *Hope* [1960] A.C. 551, Lord Radcliffe said that the words used in the judgments above referred to might be plain, but they involved several distinctions which were far from clear. What was direct, and what collateral or incidental? By what test was the matter the same or different? When were the parties the same and what were the determining marks of a party or a *lis*? It was not possible to discuss the point at issue in the case in terms of those general phrases, but one thing was certain: in rating and taxation cases there was high and frequent authority for the proposition that it was not in the nature of a decision given on one rate or tax that it should settle anything more than the bare issue of that one liability, and, consequently, it could not constitute an estoppel when a new issue of liability to a succeeding year's rate or tax came up for adjudication.

A tribunal considering a rating or income tax assessment might have to take account of, and form its own opinion on, questions of general law, but the view adopted with regard to them was incidental to its only direct function, that of fixing the assessment. For that limited purpose it was a court with a jurisdiction competent to produce a final decision between the parties before it; but it was not a court of competent jurisdiction to decide general questions of law with that finality which was needed to set up an estoppel.

In that case a hereditament occupied by the society was held by a local valuation court on appeal in 1951 to be exempt from rating under the Scientific Societies Act, 1843, and there was no appeal by the valuation officer against that decision. In the new quinquennial valuation list which came into force in 1956 the hereditament was assessed as rateable. On an appeal to the local valuation court arising out of the society's proposal for the alteration of the list by showing the hereditament as exempt, the valuation officer did not contend that any alteration had been made in the constitution of the society since 1951, and did not suggest that the society carried on activities which it did not then carry on. The society contended that the issue of exemption was *res judicata* as between the parties by virtue of the decision of 1951; but the House of Lords, affirming the decision of the Court of Appeal, held that no estoppel arose. Lord Keith said that a public officer, such as the respondent valuation officer, could not be estopped from carrying out his duties under statute, viz., the recurrent duty of periodically bringing into existence a valuation list.

In the earlier rating case of *Broken Hill Proprietary Co., Ltd.* v. *Broken Hill Municipal Council* [1926] A.C. 94, Lord Carson said, at p. 100 :—

> "The decision of the High Court related to a valuation and a liability to a tax in a previous year, and no doubt as regards that year the decision could not be disputed. The present case relates to a new decision, viz., the valuation for a different year and the liability for that year. It is not *eadem quaestio*, and therefore the principle of *res judicata* cannot apply."

Similarly, in *Inland Revenue Commissioners* v. *Sneath, supra*, it was held that a decision of the Special Commissioners on an appeal as to the assessment of tax is final and conclusive between the parties only in relation to the assessment for the particular year for which it is made, and cannot be treated as an estoppel binding on the same party for all years.

Recent decisions

An additional assessment to income tax may be followed by a further additional assessment, if the inspector of taxes makes a subsequent "discovery" within s. 41 of the Income Tax Act, 1952. In that event, a decision of an appeal tribunal regarding the first assessment does not operate as an estoppel in the case of an appeal again the second assessment, although both assessments relate to the same year. In *Cansick* (*Murphy's Executors*) v. *Hochstrasser* [1961] T.R. 23, the deceased was assessed for the four years 1945–46 to 1948–49 in the amounts of £749, £965, £715 and £344 respectively. In November, 1948, additional first assessments were made upon him in respect of 1945–46 to 1947–48 in the amount of £50 for each year, but on appeal to the Special Commissioners these additional assessments were discharged. In 1955 further additional assessments were made in respect of 1945–46 to 1948–49 in the sums of £500, £500, £300 and £300. The deceased appealed against these assessments to the General Commissioners, who varied them, namely, for 1945–46 to nil ; for 1946–47 to £1,000 ; for 1947–48 to £1,000 and for 1948–49 to £500. The deceased died in 1956. On appeal by way of case stated it was contended on behalf of the appellant (i) that in respect of 1945–46, 1946–47 and 1947–48 there was no power to make the further additional assessments under appeal, as additional assessments were made in 1948 ; and (ii) that in respect of 1946–47 and 1947–48 the income in question was finally determined as the result of the appeal against the original additional assessments, and that that decision could not be varied by any further assessment or by any further decision of the General Commissioners.

Buckley, J., said that the first point turned upon the construction of what is now s. 41 of the 1952 Act. It was argued that the statutory language was only appropriate to apply to one additional first assessment in respect of any one year of charge under any one Schedule, but it seemed to his lordship that the words "if the surveyor discovers" in subs. (1) were perfectly capable of extending to more than one discovery in respect of one year and in respect of one Schedule, as the later words "in every such case" indicated that the section was intended to operate if and whenever the surveyor made a discovery. The second point turned upon the terms of what is now s. 50 (2) of the Act (which provides that an appeal, once determined by the Commissioners, is to be final, and that neither the determination of the Commissioners nor the assessment made by them is to be altered except by order of the court upon a case stated). On that point it was argued that the function of the Special Commissioners when considering the appeals against the first additional assessments was to determine the amount of the taxpayer's chargeable income under Sched. D for each of the two years 1946–47 and 1947–48 ; and that by discharging the two additional assessments relating to those years the Commissioners determined the taxpayer's income for those years and, in the terms of the subsection, their decision was final and was not to be altered.

Buckley, J., said that the decision of the Special Commissioners was one which could not have been challenged with regard to the particular subject with which they were concerned ; that is, whether the additional assessment of £50 in respect of each of the years 1945–46 to 1947–48 was justified or not upon the facts as then known to them ; but it was a conclusion on that matter and that matter only. Since then further matters had come to the notice and attention of the inspector. He had seen further accounts of the taxpayer's business and there had been a further discussion of the position with the taxpayer's accountant. On those new facts it was open to the General Commissioners to make a further additional assessment in respect of the years in question.

A trust for charity

In *Caffoor and Others* v. *Income Tax Commissioner, Colombo* [1961] 2 W.L.R. 794 ; p. 383, *ante*, the whole of the income under a trust established by the grantor was, for the purposes of the case, to be treated as if appropriated for the "education, instruction or training . . . of deserving youths of the Islamic faith in such professions, vocations, occupations . . ." as a board, set up under the trust deed, might in its discretion decide. Under the provisions of the deed, so long as there were male descendants in either the male or female line of the grantor, or of any of his brothers or sisters, for whose education the board was prepared to provide or reserve money on the ground that they qualified as deserving youths of the Islamic faith, no other youth of that faith could obtain any benefit under the trust. In 1954, on an appeal by the trustees to the Board of Review constituted under the Ceylon Income Tax Ordinance (c. 188, Legislative Enactments of Ceylon, 1938) against assessment to tax of the trust income for the year 1949–50, the Board of Review exempted the income from tax on the ground that the trust was of a public character and established solely for charitable purposes within the meaning of s. 7 (1) (*c*) of the Ordinance.

Assessments to income tax were later made on the trust income for the five years 1950–51 to 1954–55, and an appeal was again allowed by the Board of Review. The Supreme Court of Ceylon reversed that decision, and the trustees appealed to the Privy Council. They contended that as between themselves and the respondent the question of the entitlement of the trust income to exemption from tax had been conclusively decided by the Board of Review in 1954, and that that decision set up an estoppel *per rem judicatam*. The appeal failed, Lord Radcliffe saying that, in matters of recurring annual tax, a decision on appeal with regard to one year's assessment did not deal with *eadem quaestio* as that which arose in respect of an assessment for another year, and consequently did not set up an estoppel. Although educational purposes were charitable purposes, no trust under which the beneficiaries were defined by reference to a purely personal relationship with a named propositus could be a valid gift. The consideration of questions of law or construction for the purpose of reaching the decision were, however, collateral or incidental to the determination of the main issue, which was the assessment of the trust income to tax for the years 1950–51 to 1954–55 and the liability for those years.

A case not followed

In appeals against rating and income tax assessments much reliance has been placed in the past on the decision of the Privy Council in *Hoystead* v. *Taxation Commissioner* [1926] A.C. 155 (see, for example, *Hood Barrs* v. *Inland Revenue Commissioners* (1960), 53 R. & I.T. 284). In the *Hoystead* case an assessment to federal land tax in Australia for the year 1918–19 had been the subject of an appeal, and a case was stated for the opinion of the High Court on a point of law that determined the assessment, viz., the correct interpretation of the taxing statute with regard to joint interests in land taken by the assessees under their father's will. There was a later appeal in respect of the assessment for the year 1920–21; and the question that was brought to the Privy Council was whether the Commissioner of Taxation was estopped in the matter of that assessment by the judgment that had been delivered by the High Court in the earlier proceedings. It was decided that he was. Unfortunately, however, the argument that the determination of an assessment for one year could not set up an estoppel on an assessment for another year (an argument that was accepted by the Privy Council at almost the same time in the *Broken Hill* case, *supra*) does not appear either to have been presented to the Board or to have been noticed or adjudicated on in the opinion of the Board, which was delivered by Lord Shaw, although there was a passing reference to the point of *eadem quaestio* in the majority judgment of the High Court (in Australia) which was reversed on the appeal. In the result, the attention of the Board in delivering its opinion was wholly occupied with a discussion of what is quite a different issue in connection with estoppel, namely, whether there can in law be estoppel *per rem judicatam* in respect of an issue of law which, though fundamental to the issue, has been conceded and not argued in an earlier proceeding.

In the *Caffoor* case their lordships were of opinion that it was impossible for them to treat *Hoystead's* case as constituting a legal authority on the question of estoppels in respect of successive years of tax assessment. So to treat it would bring it into direct conflict with the contemporaneous decision in the *Broken Hill* case; and to follow it would involve preferring a decision in which the particular point was either assumed without argument or not noticed, to a decision, in itself consistent with much other authority, in which the point was explicitly raised and explicitly determined. In *Society of Medical Officers of Health* v. *Hope*, *supra*, the decision in *Hoystead's* case was also subjected to criticism, and it would now appear that the prospects of raising successfully a plea of estoppel *per rem judicatam* in a rating or taxation case are somewhat sadly diminished.

K. B. EDWARDS.

HERE AND THERE

WELL TYPED

AMERICA is not only the land of liberty, it is also the land of versatility. It is not only the land of free men; it is also the land of free women. The English, by contrast, love, above everthing else, a classification which fixes today, tomorrow and for ever the people with whom they have to deal. The individual who steps out of line puzzles and irritates them. In England if a man is different from his neighbours it is wiser for him not to show it, or his personality will be the subject of the most sinister interpretations. Even villainy will be rewarded with a sort of tolerant affection so long as it can be familiarly typed. On this obsession with the intelligibly classifiable rests the popularity of the "kitchen sink" school of drama and the "crime is so jolly" line in musicals. Like Nature in Tennyson's "In Memoriam," the English are careful of the type and careless of the single life to the point of active dislike, if it cannot be type-cast. America, of course, has its conventions and its conventional people, but it is not a mortal sin for the individual to be individualistic or to have two individualities for a change.

PERMISSIBLE VARIETY

As an utmost and ultimate concession to variety the English will allow a limited but predictable association of different characteristics in the same way that fish and chips (the marriage of the earth apple with the denizens of the deep) is nationally blessed, improbable though their union is. The outer wrapping of newsprint consecrates and sanctifies it. In the same way, it is not only permissible, but has hitherto been almost expected, that a High Court judge should be a country gentleman. Rare is the judge who does not assume a certain authoritative familiarity with farming, or anyhow with country ways. But that is about the limit. In America the Judiciary are allowed a far wider scope in the matter of antecedent activities. In the first place, the United States having many of the characteristics of a matriarchy, the Americans do not feel about women lawyers, as the English in their hearts still do, that the surprising thing is not so much to find them in successful practice as to find that they are in practice at all. The Americans therefore are more ready than are the English to accept women as judges.

BEAUTY AND THE BENCH

BUT suppose that a change of attitude were to bring about the acceptance of women judges as a normal professional phenomenon in England. We would still, I suspect, expect her to exhibit all the traditional characteristics of her masculine counterpart. Suppose in England a young lady in her twenties attained a judgeship and in the consequent "Who's Who" record of her career the public were informed that in 1952 she had won a beauty competition as "Miss Norfolk Broads," in 1953 another as "Miss Worcestershire Sauce," in 1954 another as "Miss Isle of Man," and finally in 1955 had been voted "Miss College Dream Girl." Somehow one feels that the English would consider that the unwritten law of classifications had been rather sensationally broken. Yet there is no law of nature that a beautiful girl cannot be a clever girl too. In the world as now constituted, to be a "Beauty Queen" is as much a recognised career as to be a secretary, and money earned that way will pay for a legal education just as surely as money won on the football pools or the racecourse. And if the lawyer so educated is able and honest why should her subsequent career be hamstrung? All the same, the English mind has to make a conscious effort of adjustment to admit that there is no *a priori* reason at all. In England the practical obstacle would still be the English way of looking at life. But in America, as I said, they look at life differently, and in fact a former "Miss Idaho" and

"Miss College Dream Girl" is now a judge in Idaho, gravely adjudicating in court beneath the Stars and Stripes and the portrait of Abraham Lincoln. But even in free America there are inhibitions. The lovely and learned judge admits and regrets that bikinis are out of her life for ever.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Covenants for Title and Registered Conveyancing

Sir,—I was most interested to read the article with regard to Covenants for Title—IV, in your issue of 22nd September (p. 800), especially the suggestion that Professor Potter's proviso or a variation of it should find its place in our Land Registry Forms of Transfer.

I consider this suggestion most interesting especially as I think that overriding interests constitute the main difficulty to the whole Land Registry system.

It occurs to me, however, that it would not be of value to put the proviso in the transfer because the vendor's solicitor would object to it, and therefore there would have to be a specific clause inserted in the contract as well. It is unlikely in the seller's market of today that such a clause would be accepted.

N. E. OSBORN.

London, N.3.

[*Our contributor writes:* I think that Mr. Osborn makes a very good practical point. It is arguable that the purchaser, being entitled to have the vendor enter in the transfer into the covenants for title appropriate to the capacity in which the vendor contracted to sell, can simply choose whether such covenants are to be expressly (by Potter's proviso) or impliedly (by s. 76) incorporated. After all, choice of form is the purchaser's privilege and, since the difference between express and implied incorporation is not one of substance, the vendor should not be entitled to object.

However, as Mr. Osborn obviously appreciates, it can also be argued that Potter's proviso does not simply incorporate the covenants for title but extends them. If this is so (as it is on the face of it) then the vendor is, as he says, entitled to object in the absence of contract provision.

In view of the seller's market consideration mentioned, I think that the only answer to the particular point is for an appropriate provision to make an appearance in the standard general conditions of sale. But, as I indicated in the articles, my view is that the whole subject of the implied covenants for title is quite unsatisfactory and requires radical revision.]

Practical Estate Duty

Sir,—I have read with interest Mr. Philip Lawton's article entitled "Practical Estate Duty—V" published on p. 924 of your issue of 3rd November, and particularly that part of the article sub-titled "The windfall." I notice, however, that Mr. Lawton does not mention the position where the value of the property has been agreed with the district valuer. I understand that where this has been done and duty paid on the basis of the value reported by the district valuer to the Estate Duty Office it is the practice of the Estate Duty Office to close the file when the certificate of discharge has been granted and not to re-open it, even though the property is subsequently sold at a higher figure.

Can Mr. Lawton comment on this?

C. E. JESSOP.

Cheltenham.

[*Mr. Lawton writes:* This is undoubtedly the practice, but a certificate of discharge is not granted (except in very exceptional circumstances) until two years have passed from the date of death, and my article was primarily concerned with sales during that period.]

"After-Sales Service" in Conveyancing

Sir,—I was most delighted to read the article entitled as above, by H.L.M., in last week's issue (p. 962). I believe that such an article does a real service. It certainly put me in a good mood for the rest of the day because I realised that the problems which beset me are the same as those experienced by the whole of the profession from top to bottom.

It was most interesting to read that H.L.M. had given up litigation. I have been trying to do this for years but have only really managed to dig in my toes lately since my valuable managing clerk, who did the court work, has passed away. What is the future of litigation, I do not know. It tends to be very worrying, to be conducted on behalf of people determined to make mountains out of mole-hills, and to be a complete waste of time.

FRANK STIMPSON.

London, S.E.23.

"THE SOLICITORS' JOURNAL," 23rd NOVEMBER, 1861

ON 23rd November, 1861, during the American Civil War, THE SOLICITORS' JOURNAL drew attention to the complications of international law in connection with American vessels coming into our ports: "A Federal ship of war, *The James Badger*, on 12th November left Southampton, for the purpose of intercepting a merchant vessel, which had been loading at Liverpool with military stores for a Confederate port. Acting upon this acquiescence of our Government in the advent of a belligerent vessel, a Confederate man of war, *The Nashville*, has still more recently entered the port of Southampton, where it lies at present, after having just burned on the high seas a Federal States merchantman, *The Harvey Birch*, the cargo and crew of which *The Nashville* took on board and conveyed into Southampton. The captain of *The Nashville*, who represents himself to be a commissioned officer of the Confederate Government, considered himself warranted in destroying *The Harvey Birch*, by way of reprisal, for the invasion of Southern territory by the Northerns, and their devastation of Southern property. The relative rights of these belligerents we do not . . . mean to discuss. But we wish to direct our readers' attention to the international consequences that may result from these belligerent visits. If no special proclamation had been issued by our Government . . . the duty of our Executive would be strictly to prohibit all warlike vessels . . . from entering any of our ports . . . But the proclamation . . . in the London Gazette . . . puts this matter out of dispute . . . The relations of our Government to both belligerents are . . . those of strict neutrality . . . It is . . . doubtful whether our Government was justified in looking on while *The James Badger* . . . was being equipped for offensive purposes before their eyes. As they suffered this to proceed, it does not appear wonderful that the Confederate ship, *The Nashville*, expected similar treatment . . . Indeed, *The James Badger* was guilty of a much greater violation of neutral rights than *The Nashville* had been."

Personal Note

Major WILLIAM WHITEHEAD HICKS BEACH, solicitor, of London, W.C.2, and M.P. for Cheltenham since 1950, is not to seek re-election at the next general election because of business commitments.

REVIEWS

A Casebook on Contract. Second Edition. By J. C. SMITH, M.A., LL.B., of Lincoln's Inn, Barrister-at-Law, and J. A. C. THOMAS, M.A., LL.B., of Gray's Inn, Barrister-at-Law. pp. xxiv and (with Index) 528. 1961. London: Sweet & Maxwell, Ltd. £2 17s. 6d. net.

In this work the authors' aim has been to select, not so much "leading" as discussion-provoking cases, and to present the student with as many different factual situations as possible. To this end, in addition to English decisions, they have included Commonwealth and American cases and extracts from textbooks and articles which have appeared in legal periodicals. It is true that many of the reports have been rigorously edited, but the work's "discussion-provoking" qualities have been increased by the inclusion of numerous questions and problems. The book seeks to raise problems rather than answer them and for this reason it is particularly valuable to the student who is able to discuss the problems with a tutor. The student working alone may well feel that he is in greater need of a book which sets out to provide the answers!

In the present edition some of the contents have been re-arranged and the authors have kept their work up to date by the inclusion of a selection of recent decisions and the removal of material whose utility has diminished. No doubt it will be widely used, especially, we would think, in the universities.

The Concise Encyclopaedia of Crime and Criminals. Edited by Sir HAROLD SCOTT, former Chief of Scotland Yard. pp. 351. 1961. London: Andre Deutsch, Ltd. £2 10s. net.

This, as the publishers state, is the most complete and up-to-date exposition of crime, criminals and criminology ever published in a single volume. It should, and most probably will, be periodically expanded to keep us all informed of the latest developments. What makes it a first-class book of reference, fit to enrich all criminal chambers, is the simple alphabetical arrangement of the subjects treated and the adequate cross-references, as well as the plain, accurate and sufficient accounts rendered. Besides, this is excellent stuff to while away a restful hour by the fireside. One is given authoritative information about the infamous spies, frauds, highwaymen and racketeers; about the organisations set up and the methods used to bring them to account for their misdeeds; about the invaluable scientific aid given by the experts in forensic medicine; about the lawyers who have waged valiant battles against strong odds; about the pioneers of penal reform. Here are details about secret societies, such as the Mau Mau, Mafia and Murder Inc.; the evolution of the police forces in this country; Scotland Yard and its French and American counterparts; and Interpol; while the major offences are explained. Not the least interesting are the 96 pages of illustrations of people, things and scenes (the last word in the caption of plate 75 is obviously superfluous). Among the distinguished contributors are Ian Fleming, Dame Rebecca West, Edgar Hoover, of F.B.I. fame, and the untiring Earl of Longford (better known as Lord Pakenham). The editor, Sir Harold Scott, gives the cachet to the whole magnificent production.

Common Sense about Crime and Punishment. By C. H. ROLPH. pp. 175. 1961. London: Victor Gollancz, Ltd. 12s. 6d. net.

The object of the series of books of which this is one is modest; it is simply, assuming no special knowledge on the part of the reader, to be intelligible and reasonably objective about each subject. It is well known that the author has certain definite views. These almost persist in breaking through, but just as we get to the point when a chapter is building up in a really constructive way the author remembers that he is required to be "reasonably objective, while giving a considered view," and goes on to the next. For this reason we found the book unsatisfactory. Its compass does not permit it to be comprehensive even if reliable statistics existed. It is not propaganda, though it is usually clear what conclusions the author would draw. We are disappointed by the shortage of constructive ideas, again because the author has to be objective. For example, he stresses the absurdities of imprisonment whereby large numbers of men have a very short working day and contribute little towards their keep. We should like to be told the implications in money, staff and buildings of having real work done by prisoners. Again, the present system of after-care is generally recognised to be insufficient, but we should like to know the precise form which it should take, particularly in view of the impending changes. The author has kept too faithfully to the terms of his charter for his book to perform more than a limited service, although we have no doubt that it will be of great value to those who come to the subject for the first time.

The Citizen and the Administration. The redress of grievances. Director of Research, Sir JOHN WHYATT. With a Foreword by the Rt. Hon. Sir OLIVER FRANKS, G.C.M.G., K.C.B., C.B.E. pp. xv and 104. 1961. London: Stevens & Sons, Ltd. 10s. 6d. net.

This report by "Justice" recommends the establishment of a British Ombudsman, to be known by such title as Parliamentary Commissioner, upon which we commented at p. 915, *ante*. The inquiry, whose director of research was Sir John Whyatt, formerly Chief Justice of Singapore, was broadly designed to start its investigations where the Franks Committee left off, viz., to consider what reforms were required in the way of constituting formal machinery to deal with complaints against discretionary decisions and acts of maladministration. The Council on Tribunals was set up in 1959, following the Franks Committee's recommendations, and supervises the working of tribunals to ensure that the principle of impartial adjudication is observed. The Whyatt Report includes a detailed description of the work of the Ombudsman of both Sweden and Denmark. It recommends that the powers of the Council on Tribunals should be extended to cover those areas of discretion where decisions are made which are not at present subject to appeal, and widened in other respects. The establishment of a general tribunal is proposed to deal with appeals from miscellaneous discretionary decisions which cannot suitably be allocated to specialised tribunals, e.g., decisions concerning parental choice of school, allocation of hospital beds and granting of import licences. There is much food for thought in the report, which is clearly written and makes a strong case in favour of its proposals.

The Estates Gazette Digest of Land and Property Cases, 1960. Compiled and edited by PETER ASH, M.A., of the Inner Temple, Barrister-at-Law. pp. xi and (with Index) 396. 1961. London: The Estates Gazette, Ltd. £2 5s. net.

Although the section devoted to rating in this issue of the Estates Gazette Digest has been reduced in size owing to the changes made by the Rating and Valuation Act, 1961, the book is slightly larger than its predecessors, a circumstance attributed by the editor to a growing turnover in real property, yielding "a crop of rather old-fashioned cases of great interest." Sections covering agricultural holdings and mortgages have replaced the "miscellaneous" section, and other sections deal with compensation and compulsory purchase, estate agency and auctioneering, landlord and tenant, the Landlord and Tenant Act, 1954, Pt. II, the Law of Property Act, 1925, s. 84, planning, the Rent Acts, and vendor and purchaser. The price remains the same as last year.

The Finance of Small and Medium-sized Businesses. A Comparative Study. pp. 121. 1961. Prepared by the Research Services of C. D. International (U.K. Research Office), Ltd., London; C.I.D. Planning Institute, Ltd., Winnipeg. Published for private circulation.

This book gives an account of the formation, objects, organisation and achievements of the Industrial and Commercial Finance Corporation, Ltd., and makes comparisons with its Canadian counterpart, the Industrial Development Bank. The latter, set up at the same time in 1945, was designed to carry out a similar function to that of the I.C.F.C., namely, to enable small and medium-sized businesses to obtain enough capital to ensure their growth in the long run. Those interested in this field will find this publication most informative.

NOTES OF CASES

*These notes are published by arrangement with the Council of Law Reporting. Except in respect of those marked *, full reports of the judgments, revised by the judges, will shortly appear in the Weekly Law Reports. A list of cases reported in today's issue of "W.L.R." is set out at the end of these notes.*

Case Editor: J. D. PENNINGTON, Esq., Barrister-at-Law

Judicial Committee of the Privy Council

SALE OF GOODS: BREACH OF CONTRACT: SELLER NOT PROTECTED BY EXEMPTION CLAUSE

Boshali *v.* Allied Commercial Exporters, Ltd.

Lord Hodson, Lord Guest and Lord Devlin

14th November, 1961

Appeal from the Federal Supreme Court of Nigeria.

A contract, which resulted from correspondence, in March, 1952, for the purchase by the appellant from the respondent of 85,000 yards of cloth of foreign origin, and in respect of which a sample was submitted, contained, *inter alia*, the following condition: "For goods not of United Kingdom origin we cannot undertake any guarantees or admit any claims beyond such as are admitted by and recovered from the manufacturers." After a consignment of the goods had been delivered the appellant rejected the remainder on the ground that they did not conform to the contract, and claimed £3,531 8s. 11d. for its breach. The respondent counter-claimed for £1,666 14s. 2d. for the appellant's breach of contract by non-acceptance. The trial judge awarded the appellant substantially the damages claimed and dismissed the respondent's counter-claim. On appeal the Federal Supreme Court of Nigeria held that the appellant had failed to prove breach of contract and gave judgment for the respondent on the counter-claim to the extent of £425 11s. 5d. The appellant appealed.

LORD GUEST, giving the judgment, said that their lordships agreed with both courts below that this was a sale by description and not by sample. The sample must, however, be taken into consideration as evidence of the description of the goods given by the seller. The goods supplied and to be supplied did not correspond to the description of the goods given in the contract and as evidenced by the sample. The trial judge was right in holding the respondent in breach of contract. The damages consisted of the loss on resale plus the loss of profit, totalling together £3,159 8s. 6d., less £900 admittedly paid to the appellant by the respondent in settlement of claims, and judgment would be for £2,259 8s. 6d. An exemption clause could only avail a party if he was carrying out the contract in its essential respects. A breach which went to the root of a contract disentitled a party from relying on an exemption clause (*Karsales (Harrow), Ltd.* v. *Wallis* [1956] 1 W.L.R. 936, at p. 940). The exemption clause here could not avail the respondent as the goods were substantially different from the contract goods. Appeal allowed.

APPEARANCES: *E. F. N. Gratiaen*, Q.C. (Ceylon), and *S. N. Bernstein* (*Rexworthy, Bonser & Simons*); the respondent did not appear and was not represented.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law]

Court of Appeal

INCOME TAX: TRADING LOSS CLAIM FOR REBATE ON PAPER TRANSACTIONS

***Johnson *v.* Jewitt (Inspector of Taxes)**

Lord Evershed, M.R., Donovan and Danckwerts, L.JJ.

10th November, 1961

Appeal from Buckley, J.

The appellant, a solicitor, appealed from the dismissal of his claim under s. 341 of the Income Tax Act, 1952, to a rebate of tax on £1,301,692 14s. 1d., being his share of an alleged trading loss during the tax year ending 5th April, 1957, of nearly £3m. shown in the accounts of a partnership firm formed by him with two associates in 1954. He claimed that the losses were incurred in the trade of dealing in stocks and shares and should be set off against his share of taxed income in the form of dividends declared in the books of a large number of companies owned by the partnership, which had been sold at the alleged loss in the relevant year. The commissioners, dismissing the claim, found that throughout the relevant transactions the partnership had subscribed a total sum in cash of £63,000 and that, despite the large losses shown in the accounts, that sum of £63,000 had emerged more or less intact at the end. They concluded that no trade had been carried on by the partnership and that the transactions giving rise to the alleged loss were not trading transactions so that no claim under s. 341 had been made good. The trial judge affirmed that conclusion. The appellant appealed.

LORD EVERSHED, M.R., said that the partnership had been formed with the object of what later became known as "dividend-stripping" operations. When that was frustrated by the Finance (No. 2) Act, 1955, the partnership and a limited company, the shares in which were held by the partnership, embarked on a series of paper transactions. They got into touch with another company, with whose assistance they "manufactured" some seventy-nine companies, each of which was made to appear to have, in addition to the issued share capital, a reserve of £50,000. The original £50,000 had been provided by the partnership and revolved round and round in and out of the books of these various companies until at the end the total apparent assets were stated in millions of pounds, alleged dividends were paid, and in one account there appeared the almost comical figure of £484,000 as reserve for income tax. At the end of the story there was a sale of the so-called assets to another company, also "manufactured" for the purpose, for the sum of £10,000. The result of the figures produced on behalf of all these companies was to show on paper a loss to the appellant of £1,301,692-odd. On the question whether in truth there were ever trading operations at all, his lordship agreed with Buckley, J., that if the only object of transactions was to make a large loss by negligible expenditure, it was easy to conclude that they lacked any genuine commercial character. These transactions could not be called anything but fantastic to the degree of impudence. His lordship only regretted that the engineer of this extraordinary scheme should be a member of the profession of solicitor. The appeal should be dismissed.

DONOVAN, L.J., concurring, said that the appellant had asked the court: What was this if it was not trade? If an answer had to be given, his lordship would call it a cheap excursion in bookkeeping fantasy, involving a gross abuse of the Companies Act and having as its unworthy object the extraction from the Exchequer of an enormous sum which the appellant had never paid in tax and to which he had no shadow of a right.

DANCKWERTS, L.J., also concurring, said that these transactions were not trading but juggling with figures. The claim was impudent and the transactions in the result were dishonest. Appeal dismissed. Leave to appeal refused.

APPEARANCE: The appellant (*Ronald Langford Johnson*) in person; *F. N. Bucher*, Q.C., and *Alan S. Orr* (*Solicitor, Inland Revenue*).

[Reported by Miss M. M. HILL, Barrister-at-Law]

HUSBAND AND WIFE: PROPERTY: EQUAL DIVISION OF BUSINESS

*Landsman v. Landsman

Sellers, Upjohn and Diplock, L.JJ. 10th November, 1961

Appeal from Master Diamond.

The parties were married in 1934 and lived in a flat in London. Both the husband and the wife had contributed to the cost of the furniture in the flat and there was a dispute as to how much money each had provided. In 1940 the flat was bombed and became a total loss and the husband applied for and received £840 war damage. Later the husband served in the Royal Air Force while the wife worked. During that period she was earning good money and was probably better off than the husband, and on one occasion sent him £50. On the husband's demobilisation in 1946 he put the £840 war damage into a partnership with his brother: a limited company was formed and prospered and in due course the brother paid the husband in the sum of £1,400. The husband and the wife then started a bootmaking business and some of the money paid by the brother went into that. The wife worked in the business, thereby saving income tax, and so avoided the need for the husband having to support the home entirely. In 1958 the marriage broke up, and a summons under s. 17 of the Married Women's Property Act, 1882, was taken out to decide the interests of the parties in the business, then worth about £2,800. The husband claimed that some of the money which had gone into the partnership was a loan to him, but did not produce pass books or accounts to substantiate that claim. The master decided that the fair apportionment in the circumstances was that each party should be entitled to one-half. The husband appealed.

UPJOHN, L.J., said that one reason for the lack of evidence was that when arrangements of this sort were made by happily married couples there was no reason why the parties should suppose that these matters should be gone into by other people or by the courts. Another reason was the husband's unwillingness to produce any pass books or accounts. That created a situation in which the master had to do what he could in the absence of evidence by the husband. *Rimmer* v. *Rimmer* [1953] 1 Q.B. 63, had been cited to the master and to the court and it had been argued on behalf of the husband that the principle of an equal division should not be extended to cover cases in which a business was concerned. His lordship did not agree with that. *Rimmer* v. *Rimmer, supra*, was supported by other decisions and, in the result, he agreed with the decision of the master and would dismiss the appeal.

DIPLOCK, L.J., concurring, said that the Act of 1882 gave the court a wide discretion in such cases, for arrangements made by a husband and wife were not to be treated as if they were a trust or a contract. The court must put itself in the position of a reasonable husband and wife and try to decide what they themselves would have done if they had been asked at the time when the arrangements were made and before any difficulties arose between them. The wife had contributed to the success of the business and in those circumstances an equal division was fair and what the parties would have agreed between themselves.

SELLERS, L.J., agreed.

APPEARANCES: *Bernard Marder* (*Seifert, Sedley & Co.*); *Gavin Freeman* (*Gaster & Turner*).

[Reported by D. M. GOODBODY, Esq., Barrister-at-Law]

BASTARDY: MAINTENANCE AND ACCESS AGREEMENT: CHILD TAKEN TO AUSTRALIA: WHETHER REPUDIATION

Bowers v. Clarke

Lord Evershed, M.R., Donovan and Danckwerts, L.JJ. 13th November, 1961

Appeal from Ipswich County Court.

The father and mother of an illegitimate child entered into a document under seal which recited that in consideration of the mother retaining custody of the child the father agreed to pay maintenance of the child by weekly payments of £5 on every Saturday, the father to be entitled to access to the child. Thereafter, the mother took the child to Australia, whereupon the father ceased to make any further payments. The mother claimed arrears of payments and the father contended that the taking of the child to Australia was such a breach of the agreement as to excuse him from making payments. Judge Southall held that the mother was in breach of the agreement, but that the breach did not amount to a repudiation excusing the father from payment. The father appealed.

EVERSHED, M.R., said that the deed was drawn without very great thought for the father; it was repetitive and sadly lacking in precision. It did not have the effect of making the right of access a condition precedent to the obligation to pay. That it was not within the contemplation of the draftsman that the mother would go off to Australia was apparent from the obligation to make payments every Saturday. If the mother had merely gone on holiday, then, even though the father's right to access could not be enjoyed, that would not be of such a nature as to amount to repudiation. The judge had expressed the view that, since the mother had gone so far with no intention of returning, the father's right had been rendered nugatory. The right of access was a kind of appendage to the agreement to be treated as an independent obligation, and it would not be right to hold that the conduct of the mother had amounted to a repudiation of the deed.

DONOVAN, L.J., said that the clause relating to access did not go to the root of the contract so that a breach of it would entitle the father to say that the mother had repudiated the agreement. The right of access was incidental rather than fundamental.

DANCKWERTS, L.J., concurred. Appeal dismissed.

APPEARANCES: *E. W. Eveleigh*, Q.C., and *Michael Havers* (*Johnson, Weatherall & Sturt*, for *Marshall, Son & Fisk*, Ipswich); *John Stephenson*, Q.C., and *Francis Irwin* (*Pennington & Son*, for *Pretty, Dawson & Butters*, Ipswich).

[Reported by G. L. PIMM, Esq., Barrister-at-Law]

LANDLORD AND TENANT: BUSINESS PREMISES: NOTICE TO TERMINATE TENANCY: SPECIFICATION OF DATE OF TERMINATION

Sunrose, Ltd. v. Gould

Holroyd Pearce, Willmer and Davies, L.JJ. 14th November, 1961

Appeal from Lancaster county court.

A tenant's lease of business premises was due to expire on 5th May, 1961. The landlords served on the tenant a notice, dated 12th January, 1961, under s. 25 of the Landlord and Tenant Act, 1954, to terminate the tenancy. The notice was in the prescribed form, but the date on which the tenancy was to terminate was given as 15th July, 196..., the year being left blank. A note on the back of the notice stated: "... As a general rule, that notice [to terminate the tenancy] must be given not more than twelve nor less than six months before the date specified in it for the termination of the current tenancy of the premises ..." On a claim for possession by the landlords the county court judge held that, as the day and month were set out, the note on the back made it clear that the date could be none other than the July next after the date of the notice, namely, 15th July, 1961, and that, therefore, the notice was valid, s. 25 (1) had been complied with and the landlords were entitled to possession. The tenant appealed.

HOLROYD PEARCE, L.J., said that it was argued that the notice did not specify the date on which the tenancy was to determine because "specify" implied certainty and exactitude, and merely to give a fomula did not comply with the necessity to specify a date even though the date could be

ascertained from the formula. Counsel conceded that at common law "notice to quit" had been liberally construed and a formula was accepted but he contended that such a formula could not be applied to a particular kind of notice under a particular statute. In *Bolton's (House Furnishers), Ltd.* v. *Oppenheim* [1959] 1 W.L.R. 913, Hodson, L.J., treated the contents of a notice under the Landlord and Tenant Act, 1954, as coming under the ordinary principles of common-law notices to quit and was followed by Barry, J., in *Barclays Bank, Ltd.* v. *Ascott* [1961] 1 W.L.R. 717; p. 323, *ante*, with whose judgment his lordship agreed. The county court judge was right in saying that the notice was a valid document under the Act of 1954 and his lordship would dismiss the appeal.

WILLMER and DAVIES, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *K. Backhouse* (*Kirk, Jackson & Co.*, Swinton); *H. Heathcote-Williams*, Q.C., and *Gerson Newman* (*David Blank, Alexander & Co.*, Manchester).

[Reported by Miss C. J. ELLIS, Barrister-at-Law]

Queen's Bench Division

LANDLORD AND TENANT: RENT TRIBUNAL: LANDLORD WRONGLY NAMED: JURISDICTION OF TRIBUNAL

R. *v.* Paddington and St. Marylebone Rent Tribunal; *ex parte* Haines

Lord Parker, C.J., Ashworth and Veale, JJ.

24th October, 1961

Application for certiorari.

H let premises to *A*, who let a back room to *C*. *C* applied under s. 2 of the Furnished Houses (Rent Control) Act, 1946, to the rent tribunal for a reduction of rent and filled in the appropriate forms, F.R.3A and F.R.1, in which he stated that he was the person to whom the premises were let, and that the lessor was "[*A*,] caretaker for landlord [*H*]." The tribunal notified *C* and *A* of a date for the hearing. Before that date *H*, who had heard of *C's* application, wrote to the tribunal stating: "With reference to the application by [*C*] I have to inform you that [*A*] is not the caretaker of the above premises, as alleged, neither has he any power or rights to create a letting of any kind." On that letter had been written, apparently by a clerk to the tribunal, the words "Ratepayer per local authority, K. Wilson & Sons, Ltd. [*H*] is one of the directors." The tribunal, nevertheless, notified *H* of the date of the hearing. Neither *H* nor *A* attended the hearing. The tribunal reduced the rent from £3 to £2 and notified *C*, K. Wilson & Sons, Ltd., and the town clerk of their decision. *H* applied for an order of certiorari to quash the decision of the tribunal on the ground that, as there was no contract on which it could act, the tribunal had no jurisdiction.

LORD PARKER, C.J., said that expenses incurred by the landlord in providing services, whether the landlord was the owner or tenant of the whole or part of the house, what purchase price he had paid, whether there was a mortgage, and what rent he paid if a lessee, were all relevant for the tribunal's decision. It was said that it was sufficient to found jurisdiction in a tribunal that there should be a contract between the lessee who referred it and a lessor. That argument was supported by reference to *Francis Jackson Developments, Ltd.* v. *Hall* [1951] 2 K.B. 488 (C.A.). His lordship entirely accepted that decision, but the position was quite different where not the original application but the validity of the decision was in question. A tribunal in exercising its jurisdiction to reduce a rent must find out who the individual landlord was and ascertain his circumstances, in particular the "expenses." Accordingly, it was not sufficient that there should be a contract of tenancy in existence but, at the time when it came to its decision, the tribunal must know who were the parties to the contract. The tribunal had no jurisdiction to make this decision and it should be quashed.

ASHWORTH and VEALE, JJ., agreed. Order of certiorari.

APPEARANCES: The applicant in person; *J. R. Cumming-Bruce* (*Solicitor, Ministry of Housing and Local Government*).

[Reported by Miss J. F. LAMB, Barrister-at-Law]

RATING: REASSESSMENT: VALIDITY

***Cox & Co. (Watford), Ltd. *v.* Bushey Urban District Council**

McNair, J. 13th November, 1961

Action.

Between 1st January and 23rd March, 1959, the plaintiffs completed certain structural alterations to their factory premises on the Watford by-pass. On 23rd March, 1959, the valuation officer made a proposal, on the ground that "the present assessment is wrong and insufficient," whereby the net annual value of the premises was fixed at £18,500 and the rateable value at £4,625. The plaintiffs claimed a declaration that the rate levied by the rating authority on the basis of that assessment should date back only to a date between 1st January and 23rd March, 1959, when the structural alterations were completed. The rating authority claimed that it should date back to 1st April, 1958, the first day of the rating period during which the proposal was made. The plaintiffs contended that the proposal was made in part "by reason of a change in value of a hereditament caused by the making of structural alterations" within the meaning of s. 42 (2) (*b*) of the Local Government Act, 1948; alternatively, that the defendants were estopped from asserting that the proposal did not reflect increases in value due to structural alterations, and that the proposal was of no effect since it did not sufficiently show the grounds on which it was supported.

MCNAIR, J., said that the plaintiffs had not been misled by the proposal or anything said by the valuation officer into believing that the proposal related in part to the alterations and that, therefore, disposed of the plea of estoppel. It was argued on the basis of *Barrett* v. *Gravesend Assessment Committee* [1941] 2 K.B. 107, that the proposal must be deemed in law to have taken into account the increase in the value of the building by the completion of the alterations, but that case did not support such a conclusion since it was a decision on the duty of the assessment committee rather than upon the content of the proposal. The critical question of construction was as to the meaning of the words of the proposal. In *R.* v. *Winchester Area Assessment Committee; ex parte Wright* [1948] 2 K.B. 455, Scott, L.J., after stating that the language of the proposal should be read without too much legal strictness, said that a proposal should make it clear whether an increase or decrease was being asked for, to which of the existing valuations in the book the proposal referred, and what was the ground of complaint as to the existing valuations, and it was sufficient to state that the valuation was "insufficient or unfair." Applying that, this proposal was one to increase the valuation of the factory premises on general grounds and not on some special ground such as the increase of value due to structural alterations. Accordingly the plaintiffs were not entitled to the relief sought. Judgment for the defendants.

APPEARANCES: *Patrick Browne*, Q.C., and *Graham Eyre* (*Lovell, White & King*); *G. D. Squibb*, Q.C., and *W. B. Harris* (*Lees & Co.*, for *C. G. Everatt*, Bushey).

[Reported by Miss H. STEINBERG, Barrister-at-Law]

HIRE PURCHASE: DAMAGES: CAR REPOSSESSED AND RESOLD: DISCOUNT ON HIRE CHARGES

Yeoman Credit, Ltd. *v.* McLean

Master Jacob. 15th November, 1961

Action.

The plaintiffs, a finance company, repossessed a motor car from the defendant after she had failed to pay more than one of the instalments under a hire-purchase agreement made between them. The plaintiffs sued for arrears of hire-purchase payments and for damages. In default of the defendant's appearance, the plaintiffs had sold the car for a sum which was low because of the condition in which it had been returned. Counsel for the plaintiffs contended that in calculating damages the loss to the plaintiffs should include the whole of the hire charges which they would have received, and that the court should disregard entirely the recovery of part of the plaintiffs' capital outlay long before the expiry of the period of the agreement.

MASTER JACOB said that the plaintiffs' contention was wrong both in principle and on authority. The hire charges represented the profit of the plaintiffs on their capital outlay and both were repayable over the period of the agreement. The accelerated receipt of the sum realised by the sale of the car reduced the amount of capital laid out by the plaintiffs and had the necessary effect, because they were interconnected, of reducing their profit. Therefore, in assessing damages, a reasonable discount for the accelerated receipt should be made by the court and it should deduct a sum which represented a reasonable percentage of the amount of the capital received in respect of the period between the date of its receipt and the expiry of the hire-purchase agreement. Moreover, it would be difficult to imagine that the plaintiffs would not use in the ordinary course of their business as a finance company the proceeds of sale to earn further profit or interest. If, therefore, in assessing damages no reduction were to be made in the amount of their hire charges the plaintiffs would in effect be receiving two amounts of profit or interest from the same amount of money. It was suggested that if a reduction were made there should be added back a sum to reflect the fact that the defendant would not be able to pay the amount of the judgment forthwith but only over a period of time. That course was unsound in principle. Any such damage did not flow from the defendant's breach of contract but from her inability to pay the judgment debt at once, and the damages ought not to be increased on that account. Judgment accordingly.

APPEARANCES: *John Lloyd-Eley* (*Paisner & Co.*); the defendant did not appear and was not represented.

[Reported by PIERS HERBERT, Esq., Barrister-at-Law]

Probate, Divorce and Admiralty Division

DIVORCE: DECREE NISI: RECONCILIATION: DECREE MADE ABSOLUTE THROUGH SOLICITORS' INADVERTENCE: RESCISSION

***Still *v.* Still**

Phillimore, J. 8th November, 1961

Summons.

On 5th July, 1961, a wife was granted, in an undefended suit, a decree nisi of divorce on the ground of the husband's cruelty. On 7th August, 1961, the wife wrote to her solicitors, telling them that a few days previously she had returned to live with her husband and asking them to let her have their account. That letter was placed on the case file. On 10th October, 1961, the managing clerk of the wife's solicitors, overlooking the wife's letter, applied for the decree to be made absolute. Subsequently, the mistake having been discovered, both parties applied jointly by summons for rescission of both decrees and for the dismissal of the petition.

PHILLIMORE, J., on being informed that the Queen's Proctor had been communicated with by telephone and had intimated that he did not propose to take any action in the matter, said that he would grant the relief asked for in the summons.

APPEARANCES: *J. G. K. Sheldon* (*S. & Co.*).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

HUSBAND AND WIFE: BELIEF IN HUSBAND'S ADULTERY: ALLEGATION TO BE PUT INTO WRITING

***Hunter *v.* Hunter**

Lord Merriman, P., and Collingwood, J.

13th November, 1961

Appeal from West Hartlepool justices.

A wife, having noticed lipstick on her husband's handkerchiefs and that when he went away from home in connection with his work he took contraceptives with him, and also having found a number of letters in her husband's pockets, some being written to him by other women and one being a letter written by the husband and apparently intended for another woman, formed the belief that he had committed adultery. She thereupon ordered the husband out of the matrimonial home and applied to the justices for a maintenance order on the ground of the husband's desertion. No notice of the wife's intention to rely upon a belief that the husband had committed adultery was served on him. The justices, finding the husband's explanation about the letters to be reasonable, dismissed the wife's complaint. She appealed to the Divisional Court.

LORD MERRIMAN, P., said that where the basis of a wife's case was a reasonable belief that her husband had committed adultery, that allegation should be formulated on paper before the case was heard. It was unfortunate that that was not done, but everybody concerned knew what the point of the case was. The basis of the justices' decision, that the husband has given a reasonable explanation about the letters, ignored the evidence of the lipstick and the contraceptives, and did not really meet the case at all. The questions to which the justices should have addressed themselves were: (1) Did the wife reasonably believe that the husband had committed adultery? (2) Did the husband, by his conduct, induce that belief? The belief must be induced by the husband's conduct, as distinct from gossip or hearsay. (3) Was the wife actuated by that belief in directing the husband to leave? The justices' order must be set aside and the wife's complaint remitted for re-hearing by a fresh panel of justices.

COLLINGWOOD, J., concurring, said that he particularly desired to stress the importance, where belief in adultery was relied upon, for the material facts to be reduced to writing and served on the opposite party.

APPEARANCES: *Joseph Jackson* (*Crossman, Block & Co.*, for *Smith & Graham*, West Hartlepool); *A. M. Hughes-Chamberlain* (*Sharpe, Pritchard & Co.*, for *Webb, Bailey & Irvine*, West Hartlepool).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

LEGAL AID: COSTS: ORDER AGAINST ASSISTED PERSON: COURT TO SPECIFY AMOUNT

Vipond *v.* Vipond and Wilkins (Queen's Proctor showing cause)

Karminski, J. 14th November, 1961

Queen's Proctor's intervention.

In January, 1960, a husband was granted a decree nisi of divorce on the ground of the wife's adultery with the co-respondent. The suit was undefended. In April, 1960, the

Queen's Proctor filed a plea in the suit showing cause against the decree nisi, on the ground that the husband had committed adultery in and since August, 1959. The husband denied the adultery alleged by the Queen's Proctor, but admitted adultery beginning in September, 1960. The court did not find the adultery alleged by the Queen's Proctor proved, and gave the husband leave to file a discretion statement in respect of his admitted adultery, exercising the discretion in his favour in respect of that adultery. The Queen's Proctor then applied under s. 11 of the Matrimonial Causes Act, 1950, for an order for costs against the husband. As the husband was legally aided, the court was asked to assess the husband's liability for costs under reg. 18 (1) of the Legal Aid (General) Regulations, 1960, as being the whole, or a specified fraction, of the Queen's Proctor's taxed costs.

KARMINSKI, J., said that where the court made an order for costs against an assisted person, the actual sum payable by the assisted person must be fixed. The liability could not be expressed in the form applied for by the Queen's Proctor. The husband would be ordered to pay £40 towards the Queen's Proctor's costs.

APPEARANCES: *Brian Neill* (*Queen's Proctor*); *Brian Bush* (*R. W. Skinner & Son*, Burton-upon-Trent).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

DIVORCE: COSTS: ADULTERY WITH WOMAN UNKNOWN: REFUSAL TO DISCLOSE NAME

***Berry *v.* Berry**

Karminski, J. 15th November, 1961

Suit for divorce.

A wife petitioned for divorce on the ground of the husband's adultery with a woman unknown, praying for the exercise of the court's discretion in respect of her own adultery. The suit was undefended. At the first hearing, on 16th June, 1961, an inquiry agent produced a written statement made by the husband, admitting adultery at two hotels in Birmingham, in September and December, 1960, with a woman whose name he refused to give. His lordship adjourned the hearing for further evidence, stating that he desired to know more of the facts relating to the husband's adultery, and with whom it was committed, and that he would not be prepared to exercise the court's discretion on the limited evidence then before him. On 15th November, 1961, the hearing was resumed. The petition had been amended and a supplemental petition filed, and it was alleged and proved that from September, 1960, until September, 1961, the husband had cohabited in adultery at a specified address in Hampstead with a woman named Mary Hughes.

KARMINSKI, J., said that the husband had evidently thought that by refusing to disclose the name of the woman with whom he had committed adultery, the result would be that she would not be mentioned. The only result achieved, however, apart from the delay of five months, was that the costs of the suit had been largely increased. In the light of the further evidence, his lordship was prepared to exercise his discretion in the wife's favour and to grant her a decree nisi, with an order for costs against the husband, making it as clear as it could possibly be made that that order was to include the costs occasioned by the adjournment. Decree nisi and order for costs accordingly.

APPEARANCES: *H. S. Law* (*G. Lebor & Co.*).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

HUSBAND AND WIFE: PENDING SUIT FOR DIVORCE: CONTEMPT OF COURT: COMMITTAL ON EX PARTE APPLICATION

Hipgrave *v.* Hipgrave

Scarman, J. 17th November, 1961

Application for a committal order.

A wife applied by summons in a pending suit for divorce for an order committing her husband to prison for contempt of court in breaking an undertaking not to molest her. On 15th November, 1961, the court, accepting an undertaking from the husband not to commit any further act of molestation, made no order on the summons. On 16th November, 1961, the husband, whilst driving his motor car along the highway, mounted the pavement along which the wife was walking, and attempted to run her down. The wife, who had only escaped by darting into the roadway out of the path of her husband's car, applied ex parte for the husband's committal.

SCARMAN, J., said that the husband very nearly inflicted on the wife very serious injury. His lordship was satisfied that the court had jurisdiction to make a committal order ex parte where delay caused by proceeding in the normal way might cause irreparable or serious mischief. He would commit the husband to prison forthwith. However, since the husband was not present and had been given no opportunity to put his side of this very grave matter, he had the right to apply immediately to have the order set aside. Order of committal.

APPEARANCES: *Michael Hutchison* (*Lewis, Foskett & Marr*, Epping).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

HUSBAND AND WIFE: MAINTENANCE: HUSBAND UNEMPLOYED: POTENTIAL EARNING CAPACITY

***Jacobson *v.* Jacobson**

Lord Merriman, P., and Collingwood, J.

17th November, 1961

Appeal from Hendon justices.

A wife applied to the justices for a maintenance order against her husband on the ground of his wilful neglect to provide reasonable maintenance for her and the child of the marriage. The husband, at the material time, was unemployed, and had been so for several months. He received £2 17s. 6d. a week national assistance. The wife was working and earning an average of £11 a week. The justices, finding the charge of wilful neglect proved, ordered the husband to pay £1 a week for the wife and £2 a week for the child. The husband appealed, contending that the wife should have been awarded a nominal sum only.

LORD MERRIMAN, P., said that the justices had taken into account the fact that the husband had a potential earning capacity. There was evidence to support that finding, the husband having stated that he intended to resume his former calling of a market trader. The justices were entitled to have regard, not only to what money the husband was actually receiving, but what he could earn if minded to follow a gainful occupation. The appeal therefore failed and must be dismissed.

COLLINGWOOD, J., concurred. Appeal dismissed.

APPEARANCES: *T. Kemp Homer* (*Sampson & Co.*); *P. A. W. Merriton* (*Beach & Beach*).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

Court of Criminal Appeal

CRIMINAL LAW: HOMICIDE: DEFENCE OF PROVOCATION NOT RAISED AT TRIAL: WHETHER INCUMBENT ON JUDGE TO RAISE ISSUE

R. *v.* Porritt

Ashworth, Salmon and Winn, JJ. 26th July, 1961

Appeal against conviction.

The appellant was charged with the capital murder of his step-father, who was shot during an evening of gang warfare between the appellant's family and another. A series of violent incidents culminated in an attack by the rival family on the appellant's house, where he and his family were

assembled. Hearing shouting and crashing of glass, the step-father went into a front room to investigate and became involved in a struggle with two men. According to the appellant's evidence, his step-father called out: "George, George, they are tooled up. Get the gun." The appellant got hold of a gun, which had been used earlier, and went into the front room. He saw his step-father astride the window-sill, held by two men, one of whom had a knife at his step-father's throat. The appellant aimed at the man with the knife and fired. The actual victim was his step-father. At his trial the appellant alleged that the shooting was in defence of a near relative in danger of his life, and that it was also in defence of his property, his own home, which was being attacked by armed raiders. It was never suggested that the appellant had been provoked or that a verdict of manslaughter was open to the jury on the evidence. The jury convicted the appellant of capital murder and he was sentenced to death. The appellant appealed.

ASHWORTH, J., giving the judgment of the court, said that, although the issue of manslaughter was not raised at the trial, there was ample authority for the view that, notwithstanding that a particular issue was not raised by the defence, it was incumbent upon the trial judge, if the evidence justified it, to leave such issue to the jury. The question was whether there was any evidence which made it incumbent on the judge to leave that issue to the jury. The matter could be approached in two ways. First, if the appellant's description of the scene in the front room was accepted by the jury it did not follow that they must necessarily acquit him on the ground of self-defence, because they might not have accepted one of the elements of that defence, namely, that it was reasonably necessary to fire. But they might have thought, if they had had to consider the matter, that the sight of his step-father in imminent peril came as such a shock to the appellant as the culmination of the stormy evening that he was no longer the master of his mind and shot on provocation. If the jury took that view the proper verdict was manslaughter. Secondly, the shooting was the culmination of a very stormy evening and the jury might have considered that the evening reached its climax with the attack on the appellant's house, and that at the moment when the appellant heard the noise of "hollering" and breaking of glass and his step-father crying out for help his self-control evaporated. Those matters were material upon which the jury could have concluded that the killing was after provocation and which, accordingly, would justify a verdict of manslaughter. The appeal against conviction would be allowed and a verdict of manslaughter substituted. The sentence would be altered to a term of ten years' imprisonment. Appeal allowed.

APPEARANCES: *Victor Durand*, Q.C., and *R. D. L. Du Cann* (*Registrar, Court of Criminal Appeal*); *Mervyn Griffith-Jones* and *S. A. Morton* (*Director of Public Prosecutions*).

[Reported by PIERS HERBERT, Esq., Barrister-at-Law] [1 W.L.R. 1372

CRIMINAL LAW: DIMINISHED RESPONSIBILITY: DEFENDANT'S REFUSAL TO RAISE DEFENCE

R. *v.* McMenemy

Ashworth, Edmund Davies and Veale, JJ.

17th November, 1961

Application for leave to appeal against conviction.

The applicant, who had been convicted of capital murder, applied for leave to appeal against conviction and to call fresh evidence. He had refused to permit the defence of diminished responsibility under s. 2 of the Homicide Act, 1957, to be put forward at his trial. Consequently, the evidence, which would have been unchallenged, to support that defence, although available at the trial, was never called, and he was convicted.

ASHWORTH, J., said that there was clear authority that if evidence was available at the trial leave would not be granted to adduce it on appeal save in exceptional circumstances. It had been sought to distinguish the authorities on the ground that the present case was indeed exceptional since the fresh evidence would not be challenged and at least part of it had been made available by the Crown. In the view of the court, the fact that the fresh evidence would be unchallenged was not sufficient ground for departing from the well-established principle. In *R.* v. *Dashwood* [1943] K.B. 1, a somewhat similar situation had arisen in regard to a plea of insanity and the court had refused leave to call fresh evidence. It had been contended that the applicant's refusal to avail himself of an uncontested defence was in itself an indication of an abnormal mind; that consequently a miscarriage of justice had occurred, and that the court should not allow an accused man to bring about that result even though he was responsible for his actions. Almost exactly the same contention had been advanced in *Dashwood's* case, *supra*, and rejected by the court, and it was difficult to understand how any miscarriage of justice could be said to have occurred. Application refused.

APPEARANCES: *J. S. Watson*, Q.C., and *F. J. Nance* (*Registrar, Court of Criminal Appeal*); *D. Karmel*, Q.C., and *R. L. Ward* (*Director of Public Prosecutions*).

[Reported by EVERARD CORBALLY, Esq., Barrister-at-Law]

CORRECTION

In the report of *St. Marylebone Property Co., Ltd.* v. *Fairweather* at p. 947, *ante*, leading counsel for the defendant should have been given as Mr. R. S. Lazarus, Q.C.

THE WEEKLY LAW REPORTS

CASES INCLUDED IN TODAY'S ISSUE OF THE W.L.R.

Wills and Bequests

Mr. WILLIAM HENRY DAVIES, solicitor, of Cardiff, left £19,615 net.

Mr. MOSES HYMEN ISAACS, solicitor, of London, W.C.1, left £71,552 net.

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Chiswick and Bedford Park.—TYSER, GREENWOOD & CO., 386 High Road. H. Norman Harding, F.R.I.C.S., F.A.I., Ernest J. Griffen, F.A.I., G. S. Bradley, F.A.I., Est. 1873. Tel. Chiswick 7022/3/4.

(*Continued on p. xviii*)

Ealing, Ealing Common and District.—JONES & CO., F.A.I., Chartered Auctioneers and Estate Agents, adj. Ealing Common Station, W.5. Tel. ACO 5006 (3 lines).

East Ham.—HAMLETTS (LEWIS J. HAMLETT, F.R.I.C.S.), 764 Barking Road, Plaistow, E.13, Surveyors and Estate Agents. Est. 1893. Tel. Grangewood 0546.

East Sheen, Barnes and Richmond.—C. & E. MELVILLE (John A. Knowlton, F.R.I.C.S.), 233 Upper Richmond Road West, East Sheen, S.W.14. Tel. PROspect 1021/2/3.

REGISTER OF
Auctioneers, Valuers, Surveyors, Land and Estate Agents

Edgware.—E. J. T. NEAL, F.R.I.C.S., F.A.I., 39 Station Road. Tel. EDG 0123/4.

Finchley.—E. C. LLOYD, 336 Regents Park Road, N.3. Tel. Finchley 6246/7.

Finchley and Barnet.—SPARROW & SON, Auctioneers, Surveyors and Valuers, 315 Ballards Lane, N.12. Est. 1874. Tel. Hil. 5252/3.

Hammersmith.—MORTON & WATERS, 310 King Street. Valuations, Survey. Estates Managed. Tel. Riverside 1080 and 4567.

Harrow.—E. BECKETT, F.A.I., Surveyor, Chartered Auctioneer and Estate Agent, 7 College Road, Harrow. Tel. Harrow 5216. And at Sudbury, Wembley, North Harrow and Moor Park, Northwood.

Harrow.—P. N. DEWE & CO. (P. N. Dewe, F.A.L.P.A., J. Ferrari, F.R.I.C.S., F.A.I., M.R.San.I., J. Cosgrave, A.R.I.C.S., A.M.I.Struct.E.), 42 College Road. Tel. 4288/90 Associated offices at Hillingdon. Established 1925.

Hendon and Colindale.—HOWARD & MANNING (G. E. Manning, F.A.L.P.A., F.V.I.), Auctioneers, Surveyors and Valuers, 218 The Broadway, West Hendon, N.W.9. Tel. Hendon 7686/8, and at Northwood Hills, Middx. Tel. Northwood 2215/6.

Hendon.—DOUGLAS MARTIN & PARTNERS, LTD. —Douglas Martin, F.A.L.P.A., F.V.A.; Bernard Roach, F.A.L.P.A.; Jeffrey Lorenz, F.V.A.; John Sanders, F.V.A.; Alan Pritchard, A.V.A., Auctioneers, Surveyors, etc., Hendon Central Tube Station, N.W.4. Tel. HEN 6333.

Hendon.—M. E. NEAL & SON, 102 Brent Street, N.W.4 Tel. Hendon 6123. Established 1919.

Ilford.—RANDALLS, Chartered Surveyors and Auctioneers (established 1884), 67 Cranbrook Road. Tel. VALentine 6272 (10 lines).

Leyton.—HAROLD E. LEVI & CO., F.A.L.P.A., Auctioneers and Surveyors, 760 Lea Bridge Road, Leyton, E.17. Tel. Leytonstone 4423/4424.

Leyton and Leytonstone.—R. CHEKE & CO., 252 High Road, E.10. Tel. Leytonstone 7733/4.

Leytonstone.—COMPTON GUY, Est. 1899, Auctioneers, Surveyors and Valuers, 55 Harrington Road. Tel. Ley 1123. And at 1 Cambridge Park, Wanstead. Tel. Wan 5148; 13 The Broadway, Woodford Green, Tel. Buc 0464.

Leytonstone.—PETTY, SON & PRESTWICH, F.A.I., Chartered Auctioneers and Estate Agents, 682 High Road, Leytonstone, E.11. Tel. LEY 1194/5, and at Wanstead and South Woodford.

Mill Hill.—COSWAY ESTATE OFFICES, 135/7 The Broadway, N.W.7. Tel. Mill Hill 2422/3422/2204.

Norbury.—DOUGLAS GRAHAM & CO., Estate Agents Property Managers, 1364 London Road, S.W.16. Tel. POL 1313/1690. And at Thornton Heath, Sutton and Piccadilly, W.1.

Putney.—QUINTON & CO., F.A.I., Surveyors, Chartered Auctioneers and Estate Agents, 153 Upper Richmond Road, S.W.15. Tel. Putney 6249/6617.

South Norwood.—R. L. COURCIER, Estate Agent, Surveyor, Valuer, 4 and 6 Station Road, S.E.25. Tel. LIVingstone 3737.

Tottenham.—HILLYER & HILLYER (A. Murphy, F.A.I., F.V.A.), Auctioneers, Surveyors, Valuers and Estate Managers, 270/2 West Green Road, N.15. Tel. BOW 3464 (3 lines).

Walthamstow and Chingford.—EDWARD CULFF & CO., F.A.L.P.A., Auctioneers and Surveyors and Estate Agents, 92 St. Mary Road, Walthamstow, E.17. Tel. COPpermill 3391. Specialists in Property Management.

Wandsworth (Borough of), Battersea and S.W. Area.—MORETON RICHES, Surveyor, Auctioneer and Valuer, House and Estate Agent, 92 East Hill, Wandsworth, S.W.18. Tel. VANdyke 4166/4167.

Wood Green.—WOOD & LOACH, Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 723 Lordship Lane, N.22 (adjacent Eastern National Bus Station, close to Wood Green Tube Station). Tel. Bowes Park 1632.

PROVINCIAL

BEDFORDSHIRE

Bedford.—J. R. EVE & SON, 40 Mill Street, Chartered Surveyors, Land Agents, Auctioneers and Valuers. Tel. 67301/2.

Bedford.—ROBINSON & HALL, 15a St. Paul's Square, Chartered Surveyors. Tel. 2201/2/3.

Luton.—RICHARDSON & STILLMAN, Chartered Auctioneers and Estate Agents, 30 Alma Street, Tel. Luton 6492/3.

BERKSHIRE

Abingdon, Wantage and Didcot.—ADKIN, BELCHER & BOWEN, Auctioneers, Valuers and Estate Agents. Tel. Nos. Abingdon 1078/9. Wantage 48. Didcot 3197.

Bracknell.—HUNTON & SON, Est. 1870. Auctioneers and Estate Agents, Valuers. Tel. 23.

County of Berkshire.—TUFNELL & PARTNERS, Auctioneers, Valuers and Surveyors, Sunninghill (Ascot 1666) Windsor (Windsor 1) and Streatley (Goring 45).

Didcot and District.—E. P. MESSENGER & SON, Chartered Auctioneers and Estate Agents, etc., The Broadway Tel Didcot 2079.

Faringdon.—HOBBS & CHAMBERS, Chartered Surveyors, Chartered Auctioneers and Estate Agents. Tel Faringdon 2113.

Maidenhead.—L. DUDLEY CLIFTON & SON, Chartered Auctioneers and Estate Agents Surveyors and Valuers, 32 Queen Street. Tel. 62 and 577 (4 lines).

Maidenhead, Windsor and Sunningdale.—GIDDY & GIDDY, Tel. Nos. Maidenhead 53, Windsor 73, Ascot 73.

Newbury.—DAY, SHERGOLD & HERBERT, F.A.I., Est 1899. Chartered Auctioneers and Estate Agents, Market Place, Newbury. Tel. Newbury 775.

Newbury.—DREWEATT, WATSON & BARTON. Est. 1759. Chartered Auctioneers, Estate Agents and Valuers, Market Place. Tel. 1

Newbury and Hungerford.—A. W. NEATE & SONS. Est. 1876. Agricultural Valuers, Auctioneers, House and Estate Agents. Tel. Newbury 304 and 1620. Hungerford 8.

Reading.—HASLAM & SON, Chartered Surveyors and Valuers, Friar Street, Chambers. Tel. 54271/2.

Windsor and Reading.—BUCKLAND & SONS, High Street, Windsor. Tel. 48. And 154 Friar Street, Reading. Tel. 51370. Also at Slough and London, W.C.

BUCKINGHAMSHIRE

Amersham and The Chalfonts.—SWANNELL & SLY, Hill Avenue, Amersham. Tel. 73. Valuers, Auctioneers, etc.

Amersham, Chesham and Great Missenden.—HOWARD, SON & GOOCH, Auctioneers, Surveyors, and Estate Agents, Oakfield Corner, Amersham (Tel. 1430), and at Chesham 8097 and Great Missenden 2194.

Aylesbury.—PERCY BLACK & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 4 Temple Street. Tel. 4661/3.

Aylesbury.—W. BROWN & CO., 2 Church Street. Tel. 4706/7. Urban and Agricultural practice.

Aylesbury.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Auctioneers and Estate Agents, 2a & 4 Temple Square. Tel. 4633/4.

Beaconsfield.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Auctioneers and Estate Agents. Opposite the Post Office. Tel. 1290/1.

Bletchley and Woburn Sands.—WOODHOUSE NEALE, SONS & CO., Auctions, Surveys, Valuations, Repositories. Tel. Nos. Bletchley 2201/2 and Woburn Sands 2167.

Burnham Common, Nr. Slough.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Auctioneers and Estate Agents, The Broadway. Tel. 1062/3.

BUCKINGHAMSHIRE (*continued*)

High Wycombe.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Auctioneers and Estate Agents, 30 High Street. Tel. 2576/9.

High Wycombe and South Bucks.—HUNT & NASH, Chartered Surveyors and Auctioneers, 15 Crendon Street. Tel. 884/5 (and at Slough).

High Wycombe and South Bucks.—H. MORCOM JONES & CO., F.A.I., Chartered Auctioneers, 86 Easton Street. Tel. 1404/5.

Princes Risborough.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Auctioneers and Estate Agents, High Street. Tel. 744/5.

Slough.—EDWARD & CHARLES BOWYER, Chartered Surveyors, 15 Curzon Street. Tel. Slough 20321/2.

Slough.—BUCKLAND & SONS, 26 Mackenzie St. Tel. 21307. Also at Windsor, Reading and London, W.C.1.

Slough.—HOUSEMANS, Estate and Property Managers, Surveyors, Valuers, House, Land and Estate Agents. Mortgage and Insurance Brokers, 46 Windsor Road. Tel. 25496. Also at Ashford, Middlesex.

Slough.—HUNT & NASH, Chartered Surveyors, 7 Mackenzie Street, Slough. Tel. 23295 (3 lines), also at High Wycombe.

Slough and Gerrards Cross.—GIDDY & GIDDY. Tel. Nos. Slough 23379, Gerrards Cross 3987.

CAMBRIDGESHIRE

Cambridge.—HOCKEY & SON (Est. 1885), Auctioneers and Surveyors, 9 Benet Street. Tel. 59455/6.

Cambridge and County.—WESTLEY & HUFF, Auctioneers, Surveyors and Valuers, 10 Hills Road, Cambridge. Tel. 55665/6.

CHESHIRE

Altrincham.—STUART MURRAY & CO., Auctioneers, etc., 8 The Downs. Tel. 2302/3. And at Manchester.

Birkenhead.—SMITH & SONS (Est. 1840), Auctioneers, Valuers. BIRKENHEAD (Tel. 1590); and at Liverpool.

Birkenhead and Wirral.—JAMES HARLAND & CO., Chartered Auctioneers, Chartered Surveyors and Estate Agents, Valuers, 46 Church Road, Birkenhead. Tel. 1597 (3 lines).

Chester.—BERESFORD, ADAMS & SON. (Est. 1899.) Auctioneers, Valuers and Surveyors, 22 Newgate Street. Tel. No. 23401.

Chester.—BROWNS OF CHESTER, LTD., Auctioneers, Valuers and Estate Agents, 103 Foregate Street. Tel. Chester 21495/6.

Chester.—HARPER, WEBB & CO. (Incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. Chester 20685.

Chester.—SWETENHAM, WHITEHOUSE & CO., Auctioneers, Estate Agents, Surveyors, Valuers, 5 St. Werburgh Street. Tel. 20422.

Congleton.—LOUIS TAYLOR & SONS, F.A.I., Chartered Auctioneers and Estate Agents, 21 High Street. Tel. 91.

Congleton.—W. J. WHITTAKER & CO., Incorporated Auctioneers, Valuers and Estate Agents, Congleton, Cheshire. Tel. 241.

Crewe.—HENRY MANLEY & SONS, LTD., Auctioneers & Valuers, Crewe (Tel. 4301) & Branches.

Macclesfield.—BROCKLEHURST & CO., Auctioneers, Valuers, Estate Agents, King Edward Street. Tel. 2183.

Nantwich, Northwich, Winsford & Tarporley.—JOSEPH WRIGHT, Auctioneers, Valuers and Estate Agents, 1 Hospital Street, Nantwich. Tel. 65410.

Northwich.—MARSH & SON, Auctioneers, Valuers, Estate Agents, 4 Bull Ring. Tel. 2216.

Stockport.—HOPWOOD & SON (Est. 1835), Chartered Auctioneers, Valuers, Estate Agents, 69 Wellington Road South. Tel. STO 2123.

CORNWALL

County of Cornwall.—JOHN JULIAN & CO., LTD. Established 1836. Auctioneers, Valuers, Estate Agents. Offices at Newquay, Truro, Falmouth and Wadebridge.

CORNWALL (*continued*)

County of Cornwall.—RUSSELL & HAMLEY, F.A.I. (C. J. HAMLEY, F.A.I., A. W. Russell, F.A.I.), 31 Town End, Bodmin. Tel. 346.

Falmouth.—R. E. PRIOR, F.R.I.C.S., F.A.I., Chartered Surveyor and Auctioneer, 3 Market Street, Falmouth. Tel. 1224.

Penzance, St. Ives, West Cornwall and Isles of Scilly.—W. H. LANE & SON, F.A.L.P.A. The Estate Offices, Morrab Road, Penzance. Tel. Penzance 2286/7.

Redruth.—A. PEARSE JENKIN & PARTNERS. Est. 1760. Auctioneers, Surveyors and Valuers, Alma Place.

St. Austell and Looe.—LAMPSHIRE & NANCOLLAS, Chartered Auctioneers and Estate Agents. St. Austell 3254/5. Looe 309.

St. Austell, Lostwithiel and Liskeard.—ROWSE, JEFFERY & WATKINS, Auctioneers, Valuers, Surveyors and Estate Agents. St. Austell 3483/4. Lostwithiel 451 and 245. Liskeard 2400.

Truro, Mid and West Cornwall.—R. G. MILLER & CO., Auctioneers, Valuers and Estate Agents. Established 1934. R. G. Miller, F.V.I., A. I. Miller, A.A.I., 6 King Street. (Phone Truro 2503.)

DERBYSHIRE

Derby.—ALLEN & FARQUHAR, Chartered Auctioneers and Estate Agents, Derwent House, 39 Full Street. Tel. Derby 45645 (3 lines).

DEVONSHIRE

Axminster.—25-mile radius.—TAYLOR & CO., Auctioneers, Valuers, Surveyors, Estate Agents. Tel. 2323/4.

Axminster, East Devon, South Somerset and West Dorset Districts.—R. & C. SNELL, Chartered Auctioneers, Estate Agents, Valuers and Surveyors, Axminster (Devon), Chard (Somerset) and Bridport (Dorset).

Barnstaple and N. Devon.—BRIGHTON GAY, F.A.L.P.A. Surveyors, Valuers, Auctioneers, Joy Street, Barnstaple. Tel. 4131.

Barnstaple and N. Devon.—J. GORDON VICK, F.R.I.C.S., F.A.I., Chartered Surveyor, Chartered Auctioneer. Tel. 4388.

Bideford and North Devon.—R. BLACKMORE & SONS, Chartered Auctioneers and Valuers. Tel. 1133/1134.

Bideford and North Devon.—A. C. HOOPER & CO., Estate Agents and Valuers. Tel. 708.

Brixham and Torbay.—FRED PARKES, F.A.L.P.A., Estate Agent, Auctioneer and Valuer, 15 Bolton Street. Tel. 2036.

Devon and Exeter.—GUY MICHELMORE & CO. Norwich Union House, Exeter. Tel. 76464/5.

Devon, Exeter and S.W. Counties.—RICKEARD, GREEN & MICHELMORE, Estate Agents, Auctioneers, Surveyors and Valuers, 82 Queen Street, Exeter. Tel. 74072 (2 lines).

Exeter.—RIPPON, BOSWELL & CO., Incorporated Auctioneers and Estate Agents, Valuers and Surveyors. Est. 1884. Tel. 59378 (3 lines).

Ilfracombe.—W. C. HUTCHINGS & CO., Incorporated Auctioneers, Valuers and Estate Agents. Est. 1887. Tel. 138.

Okehampton, Mid Devon.—J. GORDON VICK, Chartered Surveyor, Chartered Auctioneer. Tel. 22.

Paignton, Torbay and South Devon.—TUCKERS Auctioneers and Surveyors, Paignton. Tel. 59024.

Plymouth.—D. WARD & SON, Chartered Surveyors, Land Agents, Auctioneers and Valuers. (Est. 1872.) 11 The Crescent, Plymouth. Tel. 66251/4.

Sidmouth.—POTBURY & SONS, LTD., Auctioneers, Estate Agents and Valuers. Tel. 14.

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IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Expiring Laws Continuance Bill [H.C.] [16th November.

Read Second Time:—

Criminal Justice Administration Bill [H.L.] [13th November.
Glasgow Corporation (Parking Meters) Order Confirmation Bill [H.C.] [15th November.
Road Traffic Bill [H.L.] [14th November.
Southern Rhodesia (Constitution) Bill [H.C.] [16th November.
Tanganyika Independence Bill [H.C.] [16th November.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Army Reserve Bill [H.C.] [15th November.

To make further provision with respect to reserves for the regular army.

Coal Industry Bill [H.C.] [17th November.

To make provision until the end of the year nineteen hundred and sixty-two for financing any accumulated revenue deficit of the National Coal Board.

Read Second Time:—

Civil Aviation (Eurocontrol) Bill [H.C.] [17th November.
Commonwealth Immigrants Bill [H.C.] [16th November.
Education Bill [H.C.] [13th November.
Sea Fish Industry Bill [H.C.] [14th November.

Read Third Time:—

Export Guarantees Bill [H.C.] [17th November.

B. QUESTIONS

JUSTICES' CLERKS' SALARIES

Asked whether he was aware that the salaries of magistrates' clerks were fixed on a population basis, and if he would take steps to see that their salaries were fixed on the basis of the population in conjunction with the number of cases dealt with in the courts, Mr. R. A. BUTLER replied that the salaries of justices' clerks were normally settled by reference to the recommendations of a Joint Negotiating Committee on which local authorities, magistrates' courts committees and justices' clerks were represented. The recommendations of the committee were based on population figures, but allowed some scope for other factors, such as the volume of work, to be taken into account. [16th November.

STATUTORY INSTRUMENTS

Airways Corporations (General Staff, Pilots and Officers Pensions) (Amendment) (No. 2) Regulations, 1961. (S.I. 1961 No. 2161.) 7d.
Draft of the Commonwealth Preference (Western Samoa) Order, 1961.
Exchange of Securities (No. 4) Rules, 1961. (S.I. 1961 No. 2131.) 7d.
London (Waiting and Loading) (Brompton Road to Great West Road) (Clearway) (Amendment) Regulations, 1961. (S.I. 1961 No. 2144.) 7d.
London-Folkestone-Dover Trunk Road (Forge House near Broomfield Diversion) Order, 1961. (S.I. 1961 No. 2139.) 6d.
London Traffic (40 m.p.h. speed limit) (No. 18) Regulations, 1961. (S.I. 1961 No. 2145.) 6d.
London Traffic (Prescribed Routes) (Hammersmith) Regulations, 1961. (S.I. 1961 No. 2146.) 6d.
London Traffic (Prescribed Routes) (Kensington) Regulations, 1961. (S.I. 1961 No. 2129.) 6d.
Mid-Wessex Water (No. 3) Order, 1961. (S.I. 1961 No. 2153.) 7d.
Motor Vehicles (Tests) (Exemption) (Amendment) Regulations, 1961. (S.I. 1961 No. 2108.) 6d.
Private Legislation Procedure (Scotland) General Order, 1961. (S.I. 1961 No. 2133 (S. 120).) 7d.
Public Service Vehicles (Licences and Certificates) (Amendment) Regulations, 1961. (S.I. 1961 No. 2128.) 6d.
Small Estates (Representation) Act (Commencement) Order, 1961. (S.I. 1961 No. 2147 (C. 19).) 6d.
Stopping up of Highways Orders, 1961:—
County of Buckingham (No. 9). (S.I. 1961 No. 2137.) 6d.
County of Buckingham (No. 10). (S.I. 1961 No. 2138.) 6d.
County of Chester (No. 24). (S.I. 1961 No. 2121.) 7d.
County of Durham (No. 14). (S.I. 1961 No. 2134.) 6d.
County of Hertford (No. 11). (S.I. 1961 No. 2120.) 6d.
County of Lancaster (No. 36). (S.I. 1961 No. 2119.) 6d.
City and County Borough of Leeds (No. 7). (S.I. 1961 No. 2135.) 6d.
City and County Borough of Sheffield (No. 6). (S.I. 1961 No. 2136.) 6d.
County of Worcester (No. 11). (S.I. 1961 No. 2150.) 7d.
Treasury (Loans to Local Authorities) (Interest) (No. 4) Minute, 1961. (S.I. 1961 No. 2148.) 6d.
Treasury (Loans to Persons Other than Local Authorities) (Interest) (No. 4) Minute, 1961. (S.I. 1961 No. 2149.) 7d.
West Lothian Water Board (North Medwin) Water Order, 1961. (S.I. 1961 No. 2127 (S. 119).) 7d.
West Lothian Water Board (West Water and Baddinsgill Reservoirs) Water Order, 1961. (S.I. 1961 No. 2126 (S. 118).) 11d.
Worksop Water Order, 1961. (S.I. 1961 No. 2143.) 6d.

SELECTED APPOINTED DAYS

November
24th Housing Act, 1961.
December
1st Betting and Gaming Act, 1961, all provisions not already in force, i.e., s. 6; s. 29 (3) and Sched. VI, Pt. II, in so far as they relate to the Street Betting Act, 1906, s. 1 (3).

Honours and Appointments

Sir REGINALD BULLIN, O.B.E., T.D., J.P., solicitor, of Portsmouth, has been re-elected a vice-president of the Magistrates' Association.

Mr. MARTIN LLEWELLYN EDWARDS, solicitor, of Cardiff, has been commissioned a deputy lieutenant of the county of Glamorgan.

Mr. BRUCE JOHN ELLIOTT has been appointed an assistant registrar of county courts and assistant district registrar in the district registry of the High Court of Justice, attached to the Newcastle upon Tyne County Court.

Mr. EDGAR STEWART FAY, Q.C., has been appointed recorder of the borough of Bournemouth.

Mr. JOHN ROBERT THOMAS HOOPER and Mr. EVELYN CHARLES SACKVILLE RUSSELL have been appointed metropolitan stipendiary magistrates.

Mr. JOHN JOSEPH ANDREW PATRON, of the department of the Director of Public Prosecutions, is to succeed Mr. H. E. T. Dugdale, on his retirement this month, as deputy clerk to Winchester City, Winchester County, and Droxford Petty Sessional Divisions.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all

Sale of Leaseholds—Root of Title

Q. The sale of house property, usually flats and maisonettes, by means of the grant of a lease instead of by a conveyance of the freehold is becoming more and more common. We find, acting for purchasers in such cases, all too frequently that the root of title offered in the draft contract is the lease itself, which may be only a few months old or not even yet granted. In the former case the sale is usually by the original lessee and often he is not in a position to deduce title to the freehold. In the latter case the draft contract may provide for an abstract of the freehold title being furnished if required at the purchaser's expense but he will be prohibited from investigating such title or raising any requisitions thereto. We take the view that we cannot advise a purchaser or his mortgagees to accept such a title even if the former be prepared to pay for an abstract of the freehold title. The fact that the vendor may be registered at H.M. Land Registry as proprietor with good leasehold title in our opinion makes no difference. It would appear that many solicitors do not agree with us that such titles are not marketable ones. Do you consider that our attitude is correct?

A. We consider that your attitude is, in general, correct, particularly in the interests of a mortgagee. Perhaps it would not be wise to raise an objection if an abstract of the freehold title is in fact supplied and indicates a good title. We would suggest that this is a particular example of the type of case referred to by the Council of The Law Society in the *Law Society's Gazette*, vol. 55, p. 151. The Council seem to think that lessors' solicitors should advise their clients to deduce title in such circumstances.

Private Company—Sale of Company Property at Undervalue and Lease back to Company

Q. *A* is a private company of which *B* and his wife *C* are the directors who hold between them three-quarters of the share capital. The remaining one-quarter of the shares were settled by *B* on his two children (aged 20 and 17), and *X* Bank, Ltd., a solicitor and an accountant are the trustees of the settlement. *A* owns the freehold of the property, the book value of which is £*y*, but its current market value is £4*y*. *B* and *C*, as directors of *A*, propose to sell the property for £*y* to *B* or to a property company to be formed for the purpose, and the property would then be leased to *A*. (1) Are *B* and *C* entitled to carry out the proposed transaction? (2) Would the trustees of the settlement be legally justified in agreeing to the proposed transaction, having in mind the fact that the children would raise no objection? (3) Is there any other suitable method which *B* and *C* could adopt to carry out the transaction?

A. (1) In our opinion *B* and *C* cannot carry out the proposed transaction, unless the terms of the lease to *A* are such that *A* is adequately compensated for parting with the freehold at undervalue. Otherwise *B* and *C* are committing a misfeasance as directors of *A*, for which they could be liable in a winding up of *A*. (2) The trustees have a duty to the infants, and in our view cannot agree to the transaction, unless they consider it commercially justifiable from the point of view of the company, *A*, whose shares they hold. If in any doubt they should apply to the court for directions. (3) If the object is to remove the freehold from *A* the best course may be for *A* to be wound up, but more information about the trading and tax position of *A* would be required before advising on this.

LOANS TO LOCAL AUTHORITIES

Ministry of Housing and Local Government circular no. 50/61 states that the following rates of interest apply to loans advanced to local authorities as defined in s. 10 of the Local Authorities Loans Act, 1945, from the local loans fund, as from 11th November last: 6¼ per cent. on loans up to fifteen years, and 6¾ per cent. on loans for more than fifteen years.

LAW SOCIETY LUNCHEON

The president of The Law Society, Mr. Arthur J. Driver, gave a luncheon party on 9th November at 60 Carey Street, London, W.C.2. The guests were: Mr. Justice Thompson, Mr. Justice Dennison (Northern Rhodesia), Sir George Harvie-Watt, Q.C., Sir William Coldstream, Mr. Cyril W. Warwick, Mr. Terence T. Cuneo, Mr. C. M. R. Peecock, Mr. D. I. Wilson and Sir Thomas Lund.

Obituary

Mr. Leonard Bingham, solicitor, of London, E.C.4, author of "Bingham's Motor Claims Cases," died on 8th November, aged 78. He was admitted in 1915.

Mr. John William Emmerson, solicitor, of Edgware, died on 13th November, aged 59. He was admitted in 1936.

Mr. Arthur Charles King, managing clerk for thirty years to Messrs. Charles Russell & Co., of London, W.C.2, died on 10th November.

Mr. William Ashcroft Lambert, solicitor, of Sheffield, died on 13th November, aged 79. He was admitted in 1908.

Mr. James McGowan, retired solicitor, of Whitehaven, died on 14th November, aged 89.

Mr. William David Savours, solicitor, of London, S.W.5, died on 14th November, aged 67. He was admitted in 1919.

Mr. John Skinner, solicitor, former Town Clerk of Brentford and Chiswick, died on 15th November, aged 73.

PRINCIPAL ARTICLES APPEARING IN VOL. 105

6th October to 24th November, 1961

Lists of articles published earlier this year appear in the Index to Pt. I of Vol. 105 (to 30th June) and at p. 830, *ante* (7th July to 29th September)

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HINDMARSH & PARTNERS, Chartered Surveyors, Valuers, Auctioneers and Estate Agents, 49 Park View, Whitley Bay (Tel. 2351/2), 107 Northumberland St., Newcastle (Tel. 610081 (4 lines)). And at Gateshead and Alnwick.

Newcastle.—DAVID A. LARMOUR & SON, F.R.I.C.S., F.A.I., Saville Row. Tel. Newcastle 20727/8.

WALLHEAD GRAY & COATES, Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 84 Pilgrim Street, Newcastle. (Tel. 27471/2.) 75 West Street, Gateshead. (Tel. 72197.) 7 Priestpopple, Hexham. (Tel. 302.) 26 Frederick Street, Sunderland. (Tel. 2544.)

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Oxford, Banbury and surrounding districts.—E. J. BROOKS & SON, F.A.I. (Established 1840), Chartered Auctioneers and Estate Agents, Surveyors and Valuers, "Gloucester House," Beaumont Street, Oxford. (Tel. 4535/6) and 54 Broad Street, Banbury (Tel. 2670).

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Whitchurch.—JOSEPH WRIGHT, Auctioneers, Valuers and Estate Agents, 16 Watergate Street, Whitchurch. Tel. 2962 and 2157.

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SURREY (*continued*)

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Eastbourne.—HEFFORD & HOLMES, F.A.I., Chartered Auctioneers and Estate Agents, 51 Gildredge Road. Tel. Eastbourne 7840.

Eastbourne.—OAKDEN & CO., Estate Agents, Auctioneers and Valuers, 24 Cornfield Road. Est. 1897. Tel. 1234/5.

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Cardiff.—JNO. OLIVER WATKINS & FRANCIS, Chartered Auctioneers, Chartered Surveyors, 11 Dumfries Place. Tel. 33489/90.

Swansea.—E. NOEL HUSBANDS, F.A.I., 139 Walter Road. Tel. 57801.

Swansea.—ASTLEY SAMUEL, LEEDER & SON (Est. 1863), Chartered Surveyors, Estate Agents and Auctioneers, 49 Mansel Street, Swansea. Tel. 55891 (4 lines).

NORTH WALES

Denbighshire and Flintshire.—HARPER WEBB & CO., (incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. 20685.

Wrexham, North Wales and Border Counties.—A. KENT JONES & CO., F.A.I., Chartered Auctioneers and Estate Agents, Surveyors and Valuers. The Estate Offices, 43 Regent Street, Wrexham. Tel. 3483/4.

★ Classified Advertisements ★

PUBLIC NOTICES—INFORMATION REQUIRED—CHANGE OF NAME
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APPOINTMENTS VACANT—APPOINTMENTS WANTED—PRACTICES AND PARTNERSHIPS and all other headings
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Advertisements should be received by first post Wednesday for inclusion in the issue of the same week and should be addressed to THE ADVERTISEMENT MANAGER, SOLICITORS' JOURNAL, OYEZ HOUSE, BREAMS BUILDINGS, FETTER LANE, E.C.4. CHAncery 6855

PUBLIC NOTICES

ESHER URBAN DISTRICT COUNCIL

SENIOR ASSISTANT SOLICITOR

Applications are invited for appointment to the above-mentioned post at a commencing salary according to the qualifications and experience of the successful applicant within J.N.C. Scale "B" (£1,570 to £1,670 per annum). Applicants, who should be mature admitted Solicitors, must have an all-round knowledge of the work of a Clerk's Department, with an aptitude for advocacy, both in Court and at Inquiries, particularly Planning.

Further particulars obtainable from the undersigned to whom applications, stating age, experience and qualifications and the names and addresses of two referees should be submitted by 4th December, 1961.

A. G. CHAMBERLIN,
Clerk of the Council.

Council Offices,
Esher,
Surrey.

OGMORE AND GARW URBAN DISTRICT COUNCIL

LEGAL AND GENERAL CLERK

Applications are invited for the appointment of Legal and General Clerk at a salary within A.P.T. Grades I/II (£645–£960 per annum) according to ability and experience. Local Government experience not essential but applicants should have good knowledge of Conveyancing.

N.J.C. Conditions of Service, the post is superannuable and the Council operates a 5-day week.

Applications, giving age, particulars of experience and the names and addresses of two referees, to be received by me not later than 11th December, 1961.

ROY HUNTER,
Clerk of the Council.

Council Offices,
Brynmenyn,
Glam.

WILLENHALL URBAN DISTRICT COUNCIL

CLERK'S DEPARTMENT

APPOINTMENT OF LEGAL ASSISTANT

Applicants must have sound experience in conveyancing and allied matters and be capable of working with minimum supervision. Local Government experience not essential. Housing accommodation available and two-thirds removal expenses paid. Salary: A.P.T. Grade III (£960–£1,140, but maximum salary considered for right applicant). Appointment is subject to National Scheme of Conditions of Service and to one month's notice on either side.

Applications, with names of two referees, should reach the undersigned by the 7th December, 1961.

JOHN R. RIDING,
Clerk of the Council.

Town Hall,
Willenhall,
Staffs.
21st November, 1961.

HAMPSHIRE COUNTY COUNCIL

Applications are invited for the appointment on the staff of the Clerk of the County Council of an ASSISTANT SOLICITOR, with previous experience in Local Government, preferably with a County or County Borough Council, at a salary within Scale F (£2,015–£2,345). Commencing salary will be fixed according to qualifications and experience. Separation allowance and assistance with removal expenses will be paid in approved cases.

Applications, giving full particulars of age, education, qualifications and experience and the names of two referees, should reach the Clerk of the County Council, The Castle, Winchester, by 11th December.

BOROUGH OF BRENTFORD AND CHISWICK

CONVEYANCING ASSISTANT

Applications invited from unadmitted conveyancing Clerks for this post on salary range £1,005 to £1,355 per annum commencing according to age and experience.

Provision of housing accommodation will be considered.

Write full details to undersigned.

W. F. J. CHURCH,
Town Clerk.

Town Hall,
Chiswick, W.4.

COUNTY OF GLAMORGAN

ASSISTANT SOLICITOR

Applications are invited for the appointment of Assistant Solicitor, J.N.C. Grade C (£1,560–£1,825) in my Office. Considerable experience in Local Government or good general practice, and advocacy is essential. The commencing salary may be above the minimum of the scale. Five-day week. Motor Car Allowance. A lodging allowance at the rate of £130 per year may be payable in certain circumstances.

Application forms (to be returned by 4th December) and further particulars obtainable from me.

RICHARD JOHN,
Clerk of the Peace and
of the County Council.

Glamorgan County Hall,
Cardiff.

CITY OF BIRMINGHAM

Applications are invited for the following appointment in the Town Clerk's Office:—

ASSISTANT SOLICITOR
Scale B: £1,470–£1,670

Candidates need not have Local Government experience and recently qualified applicants will be considered. The Solicitor appointed will be engaged on conveyancing and general legal work in the Town Clerk's Office. Good prospects of promotion. Five-day week. Post pensionable. Medical examination.

Applications, accompanied by copies of not more than three testimonials, should be delivered to me by the 15th December, 1961. Canvassing disqualifies.

T. H. PARKINSON,
Town Clerk.

Council House,
Birmingham, 1.
November, 1961.

METROPOLITAN BOROUGH OF STEPNEY

APPOINTMENT OF ASSISTANT SOLICITOR

Applications are invited from Solicitors who are anxious to make Local Government their career. Good conveyancing and general experience necessary but previous Local Government experience not essential. Post offers scope and is superannuable.

Commencing salary according to experience will be within scale £1,355 to £1,525 per annum. Five-day week.

Applications giving details of age, qualifications, education and experience, together with the names of three referees, should be made to the undersigned.

WILFRED REEVE,
Town Clerk.

Municipal Offices,
227–233 Commercial Road,
Stepney, E.1.

ST. PANCRAS BOROUGH COUNCIL

APPOINTMENT OF ASSISTANT SOLICITOR

Applications invited from admitted solicitors for above appointment—A.P.T. V. (£1,310–£1,480, plus London weighting allowance, according age). November Finalists will be considered, especially those with local government experience.

Applicants must disclose if related to any member or senior officer of the Council. Canvassing disqualifies. No housing accommodation. Apply by letter with full particulars of qualifications, present and previous appointments, experience and names of three referees not later than first post on 4TH DECEMBER.

R. C. E. AUSTIN,
Town Clerk.

St. Pancras Town Hall,
Euston Road,
London, N.W.1.

APPOINTMENTS VACANT

CITY Solicitors require Managing Clerk for Conveyancing department; preferably fully experienced and capable of undertaking work without supervision, but less experienced assistant would be considered; good salary appropriate to general capability of applicant.—Box 8207, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LITIGATION Clerk—mainly Divorce and a few accidents—5-day week. Bedford Row. £750–£850 commencing.—Box 8210, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR required to develop and control legal department, as part of multiple company's organisation. Sound knowledge of County Court and Hire Purchase procedure essential, together with practical business ability. Minimum basis of remuneration £1,500 p.a. with considerable scope. Pension Scheme in operation.—Box 8216, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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★ Classified Advertisements ★

continued from p. xxiii

APPOINTMENTS VACANT—*continued*

MEDIUM-SIZED City firm require Assistant Solicitor for Conveyancing department; must be able and willing to undertake considerable volume of work; age preferably under 30; commencing salary up to £1,250 p.a. congenial office; good prospects.—Box 8206, Solicitors' Journal, Oyez House, Breams Building, Fetter Lane, E.C.4.

COSTS Clerk required by leading City firm. Salary up to £1,100. Pension Scheme. Luncheon vouchers. Three weeks' holiday. Write Box 8211, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PETERBOROUGH solicitors require first-class unadmitted conveyancing and probate clerk. Excellent prospects. Salary by arrangement.—Write Box 8222, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

W.1 SOLICITORS require experienced Conveyancing Managing Clerk, able to handle a volume of work without supervision. Salary according to experience but in the region of £1,500—£1,600 would be paid to suitable applicant.—Write with details of experience to Box 8224, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CROYDON solicitors require admitted or unadmitted conveyancing assistant to work under principal. Own room and secretary. Good salary, which will be progressive for right applicant.—Write Box 8226, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CITY Solicitors require admitted or unadmitted Conveyancing Clerk. Write stating full particulars.—Box C 331, c/o Walter Judd, Ltd., 47 Gresham Street, E.C.2.

WEST SUSSEX.—Assistant Solicitor required to take charge of Litigation Department. Possibility of partnership later. Salary according to experience but not less than £1,250.—Box 8228, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR required by old-established and expanding Group of Property and Merchant Banking Companies to take charge of all legal work. Should have sound practical knowledge of conveyancing and be accustomed to act on own initiative. Progressive position with salary according to experience. Pleasant offices in St. James's area.—Box 8227, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

HARROW Solicitors urgently require Managing Clerk or qualified Assistant. Mainly Conveyancing but some litigation experience essential. Please write stating full details of age, experience and salary required.—Box 8069, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

READING Solicitors require (*a*) Young Assistant Solicitor. Some prospects of future partnership. (*b*) Conveyancing Clerk, (*c*) Litigation Clerk. (*d*) Articled Clerk. No premium. Salary. State experience and salary required.—Box 7970, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

S.W.1 SOLICITORS require admitted or unadmitted Assistant experienced in conveyancing and probate and capable of working with little or no supervision. Interesting and varied work in rapidly expanding practice. Excellent salary for the right man or woman. 3 weeks' annual holiday, 5-day week, L.V.'s.—Write giving full details of education and experience to Box 8233, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4

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aged 25–27 years, as Legal Assistant to serve under the Head of the Legal Department, who is a practising Solicitor. Commencing salary of up to £1,250 p.a. Contributory Pension Fund. Commercial experience useful but not essential in a candiate otherwise acceptable.

Applications should be sent to the Staff Manager, BICC Limited, 21 Bloomsbury Street, London, W.C.1.

No reference will be made to present employers save after interview and with the applicant's consent.

YOUNG partner, preferably with capital and degree, is sought for expanding, lively, century-old general practice in Southern Kent. Principal still going strong, but fair chance for young entry to increase its share reasonably soon. Practice at present carries 4/5 solicitors. —Box 8175, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BOOK-KEEPER.—Solicitors with substantial offices at Eltham, S.E.9, and Welling, require lady or gentleman to assist chief book-keeper. Training can be given.—Box 8196, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LEIGH-ON-SEA. — Progressive Private Practice—Experienced admitted or unadmitted Conveyancing Assistant required. Pension Scheme. Congenial working conditions. Write stating experience.—Box 8208, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LEADING City of London Solicitors require conveyancing Solicitor of outstanding ability and experience, remuneration will be commensurate.—Write details and age to Box 443, Reynell's, 44 Chancery Lane, W.C.2.

EAST MIDLANDS.—Old-established firm require unadmitted Managing Clerk able to work with minimum supervision. Mainly Conveyancing. Some Probate. Salary according to experience.—Box 8231, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

JUNIOR Assistant (Male) required in Cashiers' Department of leading firm of City Solicitors. Good salary and prospects.—Box 8238, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING Manager.—Berkshire Solicitors require unadmitted man with sufficient conveyancing experience to work with only general supervision immediately and eventually to fill the position of Conveyancing Managing Clerk. Good opportunity for hard worker.—Box 8234, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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The post calls for a man—aged 24–28—who is a Barrister or Solicitor, called or admitted in England. He should be a University Graduate with a First or Second Class Honours Degree, and preferably have some experience since qualifying—not necessarily in industry or commerce.

This position offers an attractive and progressive salary, together with membership of non-contributory Pension and Life Assurance Schemes. The Company will meet removal expenses of the successful candidate and a Housing Assistance Scheme is in operation.

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Classified Advertisements

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APPOINTMENTS VACANT—*continued*

SOUTHEND-ON-SEA.—Assistant Solicitor required by established firm with large general practice. Must be good Advocate in Magistrates' Courts and County Courts and experienced in litigation. Good salary. Partnership prospects. Opportunity for right man.—Write with full details to Box 8232, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

OLD-ESTABLISHED family practice in Lincoln's Inn requires solicitor with a view to early salaried partnership and eventually succession. Emphasis at first on litigation and probate. Commencing salary up to £1,500 per annum.—Box 8235, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

THE National Guarantee and Suretyship Association Limited require an assistant for their legal department in London. The work is varied and interesting and the post is pensionable with good prospects.—Please give full information as to age, qualifications, etc., by letter marked "Private" to the Manager, 17 Charlotte Square, Edinburgh.

BRIGHTON Solicitors require shortly an Assistant, admitted or unadmitted, willing and able to take charge in absence of Principal. A good salary will be paid, and there are definite prospects. The position is particularly suitable for an applicant residing in or near Brighton.—Apply Box 8236, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EAST SUSSEX Coast.—Young Assistant Solicitor required by medium-sized firm to undertake advocacy and litigation. Commencing salary from £1,000 per annum. Write with details of experience.—Box 8237, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LEATHERHEAD-DORKING area.—Solicitor with good general experience required by established firm, as assistant with prospects of partnership.—Box 8241, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

A SOLICITOR with some experience since admission is required as an Assistant in the Legal Department of an Industrial Company in Central London. Commencing salary according to age and experience. There are Pension and Life Assurance Schemes. Please give details of education, age and experience.—Applications should be addressed to Box 8242, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor required for general country practice, West of England. Would suit newly admitted man. Salary according to experience.—Box 8243, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

TEMPORARY Assistant required by West London Suburban Solicitor for three months. Suit newly admitted man or retired Managing Clerk.—Box 8245, Solicitors' Journal Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING Clerks with experience required by old-established Solicitors at Romford and Ilford. Commencing salary up to £1,000 per annum according to age and experience.—Box 8246, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST COUNTRY.—Assistant Solicitor required, with good all-round experience. Prospects of partnership. Salary according to experience.—Box 8244, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane E.C.4.

APPOINTMENTS WANTED

SOLICITOR (27), admitted October, LL.B., seeks position in general practice in Sussex or London. Moderate salary acceptable during the first three months to gain conveyancing experience.—Box 8239, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MANAGING Clerk, unadmitted, 30 years' experience conveyancing, some probate and litigation, at present in London, desires change to South Coast or country.—Box 8247, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SECRETARY/Litigation Assistant, substantial experience, divorce, criminal and county court work, including taxation, minimum supervision, first-class shorthand/typist, 130/60, seeks employment London or South. Accommodation appreciated.—Box 8248, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR, accustomed to dealing with large volume of conveyancing, would be glad to undertake part time work for large commercial firm.—Box 8249, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

RETIRED Solicitor would be glad to undertake Conveyancing work at home for overworked solicitors. Fees moderate.—Box 8250, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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INVESTMENTS REQUIRED

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★ Classified Advertisements ★

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VALUATIONS—*continued*

CARRINGTON & CO., LTD., will give best prices for items of Jewellery, Silver and Gold sent for offer, or our representative will call to estimate for larger quantities. Valuations for Probate, Insurance, etc. 130 Regent Street, London, W.1.—Tel.: REG. 3727.

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INFORMATION REQUIRED

SAMUEL SAMUELS, Deceased

Will any Solicitor holding Deeds or any information concerning Properties held by the above (for probate purposes) please communicate with Mrs. R. G. Cohen, 3 Borrowdale Road, Liverpool, 15, or Messrs. Silverbeck & Co., Solicitors, 61 Lord Street, Liverpool.

PERSONAL

DAVIS OF PORT STREET, PICCADILLY MANCHESTER, 1.—For fine furniture at manufacturers prices. Walk round our three large showrooms, which are open daily until 6 p.m. (Wednesday and Saturday included). We are stockists of all the latest designs of furniture, carpets, mattresses, divans. 10-year guarantee. Also all domestic electrical equipment, etc. Special concession and credit facilities to members of the legal profession. Write to us for whatever you want—we can supply. No other introduction required. Tel.: CEN 0638.

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GRESHAM COLLEGE, Basinghall Street, London, E.C.2, Tel. MONarch 2433. Four lectures on "LORD HIGH CHANCELLORS OF GREAT BRITAIN AND IRELAND" by Mr. Jon Harvey, by arrangement with Mr. Richard O'Sullivan, Q.C., late Gresham Lecturer in Law, on Monday to Thursday, 27th to 30th November. The Lectures are FREE and begin at 5.45 p.m.

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(CHAncery 6855.)

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TRANSLATIONS.—V. Clayton, Market Rasen.

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